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Dominions
(South African)
No. 5.

Confidential.

Territories Administered by the High Commissioner for South Africa

Correspondence and Papers.

[1932–1933]

[*In continuation of Dominions (South African) No. 4 : continued by Dominions (South African) No. 6.*]

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CORRESPONDENCE
[1932—1933]
relating to the
Territories Administered by the High Commissioner for South Africa.

I. QUESTION OF TRANSFER OF TERRITORIES TO THE UNION OF SOUTH AFRICA.

10991/19.

No. 1.

DOMINIONS OFFICE MEMORANDUM.

SOUTH AFRICA HIGH COMMISSION TERRITORIES.—QUESTION OF TRANSFER TO THE UNION OF SOUTH AFRICA.

(Confidential.)

1. THE South Africa High Commission Territories consist of Basutoland, the Bechuanaland Protectorate, and Swaziland. Though Basutoland is entirely, and the Bechuanaland Protectorate and Swaziland are very nearly, surrounded by the territories of the Union, they are administered on behalf of His Majesty's Government in the United Kingdom by the High Commissioner for South Africa.

2. Basutoland was declared British territory and placed under the administration of the High Commissioner for South Africa in 1868 at the request of Moshesh, a Chief of outstanding ability, whose object was to secure protection for his people against the Boers. In 1871 it was annexed to the Colony of the Cape of Good Hope, but after thirteen years of constant discontent and disturbances, culminating in a general rising, it was returned, at the request of the Colony, and in accordance with the expressed wishes of the Basuto, to the administration of His Majesty's Government, acting through the High Commissioner of South Africa, since when there has been no recrudescence of trouble.

3. Bechuanaland was declared a Protectorate, under very similar circumstances, in 1885, the Chief primarily responsible being Khama, actuated by the same motive as Moshesh. In 1891 it was formally brought under the administration of the High Commissioner for South Africa.

4. Swaziland remained nominally independent till 1890, when the wholesale and overlapping concessions granted by a drunken native King necessitated some form of European control. From 1890 to 1894 the British and the Transvaal (then the South African Republican) Governments established a species of condominium which was replaced in 1894 by an arrangement under which the South African Republic was given powers of protection and administration without actual incorporation. After the Boer War the administration of Swaziland was transferred to the Governor of the Transvaal till 1907, when it was transferred to the High Commissioner for South Africa.

5. In 1909, when the constitution of the Union of South Africa came up for consideration, the natives of all three territories begged that they should not be handed over to the future South African Government. Assurances were given them that no immediate change in their administration was contemplated, but provision for their eventual transfer was made in the South Africa Act, 1909, Clause 151 of which empowers the King in Council, on addresses from both Houses of the Union Parliament, to transfer the administration of these territories to the Union, subject to certain conditions, designed for the protection of native rights and interests, and embodied in the Schedule to the Act.

6. When the South Africa Bill was before Parliament, pledges were given by the Government that the House of Commons should have the fullest opportunity of discussing and, if they wished, disapproving, any proposed transfer of these territories, and also that the wishes of the inhabitants would be ascertained and considered before any transfer took place. These pledges have been repeatedly reaffirmed by, or on behalf of, successive Secretaries of State, and an explicit undertaking has also been given that His Majesty's Government will not support in the House of Commons or elsewhere any proposal for transfer if it involves the impairment of the safeguards for native rights and interests which the Schedule to the South Africa Act was designed to secure.*

* A summary of these pledges, &c., is given in No. 30 in Dominions (South African) No. 1.

7. Since the passing of the South Africa Act the only change in the form of the administration of these Territories has been the separation in 1930 of the Offices of Governor-General of the Union and High Commissioner for South Africa, which hitherto had always been held jointly. As the Governor-General has now become solely the Representative of His Majesty in the Union, and the advice on which His Majesty acts in making the appointment is that of His Majesty's Ministers in the Union, it was considered impracticable that he should continue to be responsible to His Majesty's Government in the United Kingdom for the administration of Basutoland, the Bechuanaland Protectorate, and Swaziland. Sir Herbert Stanley, the first High Commissioner for South Africa who has not also been Governor-General, has been much impressed with the very lively satisfaction of the natives of these Territories at a change which they interpret as meaning that the King, in his relation to them, is now represented by an officer unconnected with and independent of the Union Government.*

8. The question of the transfer of these Territories has been informally raised by the Union Government on the following occasions:—

(i) In 1913 General Botha wrote personally to the High Commissioner to say that he considered that the Union must press for the transfer of Swaziland and the Bechuanaland Protectorate at the earliest possible moment. As regards the Bechuanaland Protectorate, the Secretary of State requested the High Commissioner to explain to General Botha that:—

> "His Majesty's Government could not in present circumstances regard favourably a request for a transfer of the administration of the Protectorate. He will, I trust, recognize that alike in history and in actual conditions the Protectorate differs greatly from Swaziland, and that it would be impossible in the near future to justify to Parliament a proposal for transferring the Protectorate. . . . Such a demand would in present circumstances be extremely embarrassing to His Majesty's Government. All existing indications point to strong opposition on the part of the Bechuanaland tribes and in face of their opposition (particularly that of Khama, with whom Mr. Chamberlain's settlement was made personally in 1895, and who has long been looked on in this country as the highest type of native chief), it would be quite impossible for His Majesty's Government to justify the transfer to the House of Commons, to which they have pledged themselves, in the debate on the South Africa Act, that it will have the opportunity of considering the matter before the transfer."†

As regards Swaziland, the attitude of His Majesty's Government at that date was as follows:—

> "Swaziland, which differs greatly both in history and in its present circumstances from the Bechuanaland Protectorate and Basutoland, contains a population of about 100,000 natives, who are not collected, as the Bechuana tribes mainly are, in large fixed reserves. Nor is the whole territory essentially a native territory as is Basutoland, for the Swazis at present live not only on their tribal lands, but also occupy land belonging to white owners, which forms some two-thirds of the whole area of the country, and owing to the promiscuous granting of concessions in the time of the late King Umbandine, is scattered throughout the territory. Although a great deal has been done in surveying and demarcating the land of white concessionnaires and the native areas, the process cannot be said to be complete, for under a Proclamation of 1908 no native actually resident on concessionnaires' land is to be compelled to move off for a period of five years from 1st July, 1909, and it seems in itself desirable, and would no doubt be expected by the native, that the time fixed for the division of the occupation of the country between the white landholders and the natives should have expired before any transfer of government takes place. These considerations must, therefore, defer the transfer until a date subsequent to the 1st of July, 1914.
>
> Subject, however, to the above observations, His Majesty's Government are not indisposed to consider an application for transfer."‡

Owing to the outbreak of war the whole matter dropped.

(ii) In 1919 Generals Botha and Smuts, while in England, represented to Lord Milner that the time had come to transfer Swaziland to the Union. Their views on the transfer of the Territories generally were to the following effect:—

> "Although Basutoland will have to be taken over by the Union sooner or later, there does not appear to be any special urgency for the change at present.

* 10991/19: not printed. † No. 3 in Dominions (South African) No. 1.
‡ No. 1 in Dominions (South African) No. 1.

Indeed, there are some reasons to the contrary. But the transfer of Basutoland will have to be kept steadily in view, as a very awkward situation would arise in the event of any future trouble between Basutoland and the Union in case it should then still be under Imperial Administration.

With regard to Bechuanaland, there is no special urgency for the transfer at present. But as soon as the inclusion of Rhodesia in the Union becomes a practical question, the transfer of Bechuanaland will have to be dealt with also.

There remains Swaziland, whose case is quite unlike the other two. Before the Boer War it was administered by the Transvaal Government. Since the Boer War the territory has been definitely partitioned between the whites and the natives. It is, therefore, not like Basutoland and Bechuanaland, an exclusively native territory. It contains a fair white population, consisting mostly of old Transvaal residents. The Swazis are physically of an inferior type, and will, more than most other native tribes, continue to lean on the whites. There is no reason whatever why the transfer of this territory to the Union should not be immediately effected.*

Lord Milner was disposed to agree with the view that Swaziland should be transferred, but on the return of the two Ministers to the Union the matter was again allowed to drop.

(iii) In 1924 General Hertzog, on assuming office, reopened the question of the transfer of the Bechuanaland Protectorate and Swaziland. As regards the Bechuanaland Protectorate, he was informed that the reply given to General Botha in 1913 continued to hold good.† As regards Swaziland, His Majesty's Government were at that time not indisposed to consider the possibility of transfer, but regarded a moment when the Union Government's native policy was under revision as an inopportune one for putting forward such a proposal.‡ The subsequent trend of Union native policy added to the difficulty of His Majesty's Government here agreeing to a transfer, and as the existing state of uncertainty as to the Territory's political future was incompatible with a policy of development on the part of the Administration, Mr. Amery, the then Secretary of State, during his visit to South Africa in 1927, told General Hertzog that there would be no chance of securing the consent of the House of Commons to the transfer of any of the Territories in the near future and that in the circumstances it would be advisable to allow the whole question to drop for the present.§ General Hertzog acquiesced, and in 1930, during his visit to this country, showed no disposition to press for the immediate transfer of any of the Territories, but merely asked the Secretary of State to keep an open mind as to the transfer of Swaziland at some future date, which Mr. Thomas promised to do.‖

9. At the beginning of 1931 General Hertzog stated, in reply to a question in the Union Parliament, that he refrained while in England from asking for Swaziland solely because the then minority Government were not in a position to deal with such a question: but that a serious attempt to secure it would be made after the next general election in this country. Subsequently, at a meeting in his constituency, he said that it had become quite clear to him that the time was now ripe for territories like the Bechuanaland Protectorate to be handed over to the Union.¶ Though no steps have, so far, been taken to reopen the question of transfer, the High Commissioner for South Africa has expressed the opinion that General Hertzog may take advantage of any favourable opportunity that presents itself for doing so.

10. It may be taken for granted that no such application by the Union Government in the near future will extend to Basutoland. This was made clear last year by the Union Secretary of Native Affairs, in a conversation on the subject of General Hertzog's statement about Swaziland, in which he informed the Imperial Secretary that the Union Prime Minister had no intention of asking for Basutoland, because there was no land available in that Territory, which is already over-populated, and where any such proposal would probably lead to fighting, with inevitable repercussions in the Union.** This view of the consequences of any attempt to transfer Basutoland is corroborated by the High Commissioner, who states that it is conceivable "that if one of the Territories were transferred to the Union, the natives of another Territory (particularly perhaps the Basuto) might apprehend that their hour also was at hand, and might deem it preferable either to put up such a fight as might deter the authorities concerned from proceeding with an intention of transfer, or even to perish fighting rather than submit tamely to transfer."††

* No. 6 in Dominions (South African) No. 1. † No. 37 in Dominions (South African) No. 1.
‡ No. 50 in Dominions (South African) No. 1. § 9892/27: not printed.
‖ 10991/4: not printed. ¶ 10991/13 and 10991/15: not printed. ** 10991/14: not printed.
†† 11575/6: not printed.

11. The High Commissioner considers that it is possible that General Hertzog may apply for the Bechuanaland Protectorate. The reasons given in 1913 for refusing to hold out any hope that such a demand would be favourably considered continue to hold good, and since then the chief ground for assuming that transfer to the Union was the inevitable destiny of the Protectorate has disappeared with the decision of Southern Rhodesia not to enter the Union. If Southern Rhodesia had elected to enter the Union, in accordance with general expectations at the time of the passing of the South Africa Act, which expressly provided for her admission, the transfer of the Bechuanaland Protectorate would no doubt have followed, as pointed out in General Botha's memorandum quoted in paragraph 8 (ii) above. Southern Rhodesia, however, has chosen, to all appearances irrevocably, to remain outside the Union, as a self-governing colony, with aspirations of becoming the nucleus of a larger State, embracing Northern Rhodesia and at least a part of the Bechuanaland Protectorate, and counterbalancing the Union, with its strong Dutch influence, in the South. Whatever view may be taken as to the desirability and feasibility of this project, it is quite clear that, if and when it is decided that a change in the *status quo* of the Protectorate is necessary, the claims of Southern Rhodesia to the reversion of at least the northern part of it will have to be considered, and an undertaking to this effect has already been given in reply to a formal intimation on the part of the Southern Rhodesia Government that they regard the interests of Southern Rhodesia as directly concerned in its future.*

12. Hitherto the only demand for a change in the existing system of the administration in the Bechuanaland Protectorate has come from the European settlers in certain districts situated on the Southern Rhodesia and Union boundaries. The intrusion of this element into an otherwise purely native territory is due to the fact that, unlike the rest of the Protectorate, the ownership of the land in these districts is in private hands, having been vested by Proclamation in two Companies, the Tati Company and the British South Africa Company. The position in these districts is as follows:—

Tati District.

This district is historically part of Matabeleland and is close to Bulawayo, towards which its settlers look for their ordinary business and social intercourse. They have more than once petitioned to be transferred to Southern Rhodesia, on the ground that they suffer from being included in a territory, where the activities and policy of the Administration are primarily directed by considerations of native rather than European interests. There are no serious administrative or native objections to the transfer of the Tati District but it was felt, after consulting General Hertzog, that it might be embarrassing to the Union Government if the British Government were to transfer a piece of territory to Southern Rhodesia, while refusing to consider the transfer of any of the Protectorates to the Union. The position has been explained to the Southern Rhodesia Goverment, who had associated themselves officially with the demand for the transfer of this district, and the Tati settlers were informed by Mr. Amery in 1927, when the matter was put before him during his visit to South Africa, that "although I feel it may be desirable, before very long, to incorporate the district in Southern Rhodesia, I regret that, in view of the general position in the High Commission Territories I cannot see my way to arrange for transfer in the near future."† Mr. Moffat recurred to this matter in a conversation which he had with Sir E. Harding in June, while in England *en route* for Ottawa. He expressed the opinion that the natural destiny of the Tati District was with Southern Rhodesia, and said that, in his view, the only question was as to the most appropriate time for making a change. He appreciated, however, that the Government here would much prefer that the question of a transfer should not now be raised, and appeared to accept the position.

Lobatse, Gaberones and Tuli Blocks

In 1926 the European settlers in these districts, the ownership of which is vested in the British South Africa Company, petitioned to be transferred to the Union, to whose territory they are adjacent, on the same grounds as those advanced by the Tati settlers for transfer to Southern Rhodesia. Unlike the Tati District, the first two of these Blocks could not be transferred without causing serious administrative difficulties, arising chiefly from the fact that the railway runs through them. In the case

* 10563/33 and 10563/35: not printed.

† *See* Mr. Parkinson's memorandum on the Tati District in 4901/26: not printed. Mr. Amery's conversation with General Hertzog in 11060/27: not printed; and No. 7 in Dominions (South African) No. 3.

of the Tuli Block the chief objection to transfer is that in the event of its being ultimately decided to partition the Protectorate between Southern Rhodesia and the Union, it would be convenient and desirable to maintain the Limpopo, which separates the Block from the Union, as the southern boundary of Rhodesia and the Union. The Union Government themselves have never applied for the transfer of these districts separately from the rest of the Protectorate, and are unlikely to do so, except on condition that they are incorporated in the Union, which would involve a departure from the schedule to the South Africa Act. On these grounds the petition was not acceded to, and it has never since been renewed.*

13. Apart from the claims of Southern Rhodesia, and the views of the European settlers, the rights of the British South Africa Company will have to be borne in mind if the transfer of the Protectorate ever comes to be seriously considered. These rights arise from the relations of the Imperial Government and the Company prior to 1895, when promises were made by the former which have been interpreted by the Law Officers to mean that the Company should have preferential, but not exclusive, rights to the acquisition of any concessions or unoccupied land in the Protectorate which is not required for native or administrative purposes. In accordance with this promise it has been the practice for the Company to be consulted before any Crown Land is alienated in the Protectorate. The point is an important one, since in the event of the Union Government's desiring to acquire the Protectorate for the purpose of the settlement of "poor whites" or landless natives, the preferential rights of the British South Africa Company might stand in the way. It may be added that in 1913, when there was a rumour that the Protectorate was about to be transferred, the British South Africa Company asked the Secretary of State what steps would be taken to safeguard their rights, which they feared would not be recognized by the Union Government. They were informed that a discussion of the transfer of the Protectorate to the Union was premature, and their inquiry remained unanswered, but it may be taken for granted that it would be repeated if transfer again became likely.

14. There remains Swaziland, where conditions have always been recognized as less unfavourable to transfer than those in the other two Territories. In the first place Swaziland is not a purely native territory, but contains nearly three thousand European settlers. Only one-third of its total area has been reserved for the natives, and this is interspersed among the remaining two-thirds which belong to Europeans. Conditions in the Territory as a whole are therefore comparable to those in one of the four "European" districts in the Bechuanaland Protectorate. Moreover the Union Government have historically a stronger claim to Swaziland, which prior to the Boer War was administered by the South African Republic, and till 1907 was administered by the Governor of the Transvaal, than to the Bechuanaland Protectorate and Basutoland which (with the exception of a brief and unfortunate connexion with the Cape of Good Hope already referred to in the case of the latter) have always been administered by the Imperial Government through the High Commissioner for South Africa. On these grounds His Majesty's Government have shown themselves less averse to the transfer of Swaziland than to that of the other two Territories, and in 1926 went so far as to formulate the terms on which they would be prepared to discuss the question with General Hertzog. The substance of the stipulations then made was as follows:—

(*a*) the inhabitants, native and European, to be consulted before transfer, and preferably before an official demand for transfer.

(*b*) administration after transfer to be under the terms of the Schedule to the South Africa Act.

(*c*) the Union Government to assume responsibility for all financial obligations of the Swaziland Government existing at the date of transfer.†

15. As regards (*a*), the present moment cannot be regarded as an opportune one for endeavouring to obtain the assent of the native population to transfer. The High Commissioner has recently reported that "the natives of all three Territories are utterly opposed to transfer. They would regard it as abandonment, or even betrayal, by the King."‡ The European inhabitants, who in 1925 were on the whole in favour of transfer, would probably now be opposed to it, with the exception of a number of Dutch settlers, approximating to the "poor white" class, in the southern part of the Protectorate. This change of opinion, which was referred to by General Hertzog in his statement in the Union Parliament last year on the subject of the transfer

* Nos. 57, 59, 65 and 66 of Dominions (South African) No. 1.

† The correspondence on this matter is contained in Nos. 50, 67 and 68 of Dominions (South African) No. 1.

‡ 10991/19: not printed.

of Swaziland, is due partly to the programme of development which has for the last few years been initiated and financed by the United Kingdom Government, and also, so far as the British settlers are concerned, to the pronounced racial bias of Union politics. Moreover, it is unlikely that at this moment the Union Government would be able to hold out the prospect of the construction of a railway through Swaziland, which was formerly one of the strongest attractions of transfer from the point of view of the local Europeans. It may be added that in the past General Hertzog himself has stated in the Union Parliament that the Nationalist Party were not prepared to incorporate any territory in the Union unless the inhabitants, native as well as European, desired to come in.*

16. As regards (*b*) an important safeguard of the interests of the natives after transfer was the provision of Clause 25 of the Schedule to the South Africa Act that all Bills to amend or alter the provisions of the Schedule should be reserved. The passing of the Statute of Westminster has altered the situation, and it will therefore be necessary, in view of the pledge given on this point to the natives, to make transfer conditional on the substitution of some alternative security equivalent to that which was afforded by Clause 25.

17. As regards (*c*), since 1927 His Majesty's Government have made substantial grants in aid of administration, towards development, and in respect of advances to settlers. These advances, including those made from the Colonial Development Fund, have taken the form of loans, free of interest for the present, but on terms to be prescribed hereafter, so that if the Territory is transferred to the Union the responsibility for the interests and sinking fund charges, which are at present borne by His Majesty's Government in the United Kingdom, may be taken over by the Union Government.

Dominions Office,
July, 1932.

10991/22.

No. 2.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 7.10 p.m., 17th August, 1932.)

[*Answered by No. 4.*]

(Paraphrase.)

CONFIDENTIAL No. 78. 17th August. Copy of following Confidential telegram from Havenga, Ottawa, to Prime Minister, Pretoria, dated 16th August, has been received from Prime Minister's office :—

Begins :—Confidential No. 4. Transfer of High Commission Territories. Have had satisfactory discussion with Mr. Thomas on the subject. He raised no fundamental difficulty or objection but agreed that except transfer to Union no other future could be envisaged for these territories and that the present time is opportune for settling whole matter. Question regarding acceptance of recommendations of conference had previously been raised by Mr. Thomas with Stanley and our officials a few months ago. Please do not take any further steps but hold the matter in abeyance until our return to South Africa when written invitation to personally visit Union for study of subject and final negotiation should be sent to Mr. Thomas.—*Ends.*

My Confidential letter of 9th December, 1931,† to Sir E. Harding expresses my views in regard to transfer and attitude of natives in territories.—HIGH COMMISSIONER.

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* No. 42 in Dominions (South African) No. 1. † 10991/19: not printed.

10991/24.

No. 3.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 3.34 p.m., 19th August, 1932.)

(Paraphrase.)

No. 81. CONFIDENTIAL. 19th August. My Confidential telegram No. 78 of 17th August.* I propose to defer, in view of the contents of Havenga's telegram, at any rate until situation has been further elucidated, any informal consultation of His Majesty's Government in the Union of South Africa in regard to Swaziland Land Tax, see Sir E. Harding's letter of 22nd June.† There would seem no good purpose if transfer really imminent in introducing at this stage new form of taxation and Prime Minister might be expected to suggest that question should stand over for consideration by the Union Government after transfer. Until I am in possession of your instructions I am also particularly anxious to avoid giving Prime Minister opportunity of speaking to me about transfer. You will appreciate that I am most seriously perturbed and that if Havenga's telegram reflects accurately what has passed at Ottawa the natives of all three territories will receive the news with resentment, consternation and despair. To large and important section of European residents including missionaries the news will also be most unwelcome.

My most urgent anxiety is as to what I am to say if any leakage of Havenga's message occurs here and any report of it appears in local Press. This is not a negligible risk and native feeling in the Territories being what it is issue of some explanatory and if possible placatory statement would become immediately necessary.

With a view to such eventuality please telegraph as soon as possible whether, if statement becomes necessary I may say that His Majesty's Government in the United Kingdom has been approached by His Majesty's Government in the Union of South Africa with regard to the Territories but that in view of pledge previously given no final decision will or can be made till the inhabitants of the Territories, European and native, have had full opportunity of expressing their views, which will receive most careful consideration, and until the House of Commons has had full opportunity of considering the matter—see your Confidential despatch of 4th December, 1925,‡ your despatch No. 50 of 31st January, 1923,§ your despatch No. 475 of 13th November, 1919,‖ and your Confidential despatch No. 143 of 10th April, 1930.¶—HIGH COMMISSIONER.

10991/23.

No. 4.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 11.35 a.m., 19th August, 1932.)

(Paraphrase.)

No. 73. SECRET. Your Confidential telegram No. 78 of the 17th August* was repeated to the Secretary of State at Ottawa who has replied :—

Begins :—The account given by Havenga of the discussion regarding the High Commission territories is seriously misleading. I will telegraph more fully as soon as possible.—*Ends.*—SANKEY.

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* No. 2. † No. 132. ‡ No. 50 in Dominions (South African) No. 1.
§ 5813/1923: not printed. ‖ D. 61261/19: not printed.
¶ No. 34 in Dominions (South African) No. 4.

10991/26.

No. 5.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 1.45 p.m., 22nd August, 1932.)

(Paraphrase.)

No. 75. SECRET. Referring to my telegram No. 73 of the 19th August.* Message from Sir E. Harding:—

Begins:—I have now received following further message from the Secretary of State for Dominion Affairs:—

Begins:—In the course of conversation with Havenga on other matters, he himself raised the question of the possible further absorption of territories by the Union. I listened to what he said but made no comment other than I would, of course, consider carefully what he had said. To-day I have again seen Havenga and he agrees that the account of our conversation which he sent to General Hertzog is misleading.—*Ends.*

Secretary of State is due to reach England on Friday. It would be convenient if you could be at Pretoria during next week, but it is, I think, unlikely that there will be anything more to tell you till then.—*Ends.*—SANKEY.

10991/30.

No. 6.

TELEGRAM

from

UNION GOVERNMENT.

(Received 4.31 p.m., 12th October, 1932.)

[*Answered by No. 7.*]

(Paraphrase.)

No. 50. 12TH OCTOBER. Secret. Future administration of High Commission Territories in South Africa. Referring to conversations which have taken place between yourself and Minister of Finance during Ottawa Conference. My Government is of opinion that a further full and frank discussion should take place here as soon as possible. I accordingly desire to invite you most cordially to visit Union of South Africa for the purpose of such personal discussion at your convenience.

It would give me great pleasure if during such visit you and Mrs. Thomas and members of your staff would be guests of Union Government.—MINISTER OF EXTERNAL AFFAIRS.

10991/30.

No. 7.

TELEGRAM

to

UNION GOVERNMENT.

(Sent 9.15 p.m., 20th October, 1932.)

(Paraphrase.)

No. 45. SECRET. Reference your Secret telegram of 12th October No. 50.† Please accept my thanks for kind invitation extended to Mrs. Thomas and myself. I will think over the matter and will communicate with you again as soon as I can.—THOMAS.

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* No. 4. † No. 6.

7

10991/40.

No. 8.

GENERAL J. B. M. HERTZOG (PRIME MINISTER, UNION OF SOUTH AFRICA)

to

MR. J. H. THOMAS (DOMINIONS OFFICE).

[*Answered by No. 9.*]

Prime Minister's Office,

Pretoria, 30th November, 1932.

MY DEAR MR. THOMAS,

I KNOW how busy you all are just now, and, therefore, I would be very sorry if perchance I were to add to your worries. I hope, however, you will forgive me if I take the liberty of reminding you of my telegram of 13th [? 12th] October* last in connexion with the question of the handing over of the adjoining native territories, and of your promise in reply thereto.

After what has been decided upon at Ottawa, the matter is becoming daily more pressing for a settlement and we find it increasingly more difficult to resist the daily pressure on the part of the people of the Union for measures, restricting competition in our local markets from territories outside the Union. The depression, as you may well imagine, has much accentuated this demand. Yet it is not the only factor which to-day accentuates the necessity for any early solution of this question of handing over the native territories. A very important matter also pressing in the same direction is the question of reserving as much as possible fields of labour within the Union for the Union natives, with the consequential exclusion of natives from outside the Union. As you may well understand, we are very anxious that no such odious distinction be made with respect to the natives from the territories concerned. Unless, however, these be handed over to the Union I cannot see how we can avoid it.

I sincerely hope, therefore, that my invitation will not be set aside. I am sure that it will be a rest much required and deserved by you. I wish to assure Mrs. Thomas of a very hearty welcome.

Yours, &c.,

J. B. M. HERTZOG.

10991/40.

No. 9.

MR. J. H. THOMAS (DOMINIONS OFFICE)

to

GENERAL J. B. M. HERTZOG (PRIME MINISTER, UNION OF SOUTH AFRICA).

Downing Street, 3rd January, 1933.

MY DEAR GENERAL HERTZOG,

THANK you for your letter of 30th November.† I am very sorry that I have been unable to send before now a further reply to your telegram of 13th [? 12th] October.*

I need not say that Mrs. Thomas and I would be delighted, if circumstances should permit, to accept your most kind invitation to visit the Union of South Africa. Whilst, however, the economic situation both here and in the world generally remains as it is, and whilst so many difficult matters are demanding the attention of the Government, I feel that it is impossible for me to make any definite plans for such a visit as you have been kind enough to propose.

I will certainly keep in mind the question of coming to South Africa and will communicate with you again should conditions become more favourable for taking it up. In the meantime, please accept most warm thanks from Mrs. Thomas and myself for inviting us to be the guests of the Union Government.

Yours, &c.,

J. H. THOMAS.

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* No. 6. † No. 8.

10991/41.

No. 10.

NOTE ON GENERAL HERTZOG'S LETTER OF THE 30TH NOVEMBER, 1932,* ON THE SUBJECT OF THE TRANSFER OF THE SOUTH AFRICAN HIGH COMMISSION TERRITORIES.

THIS is not the first time that General Hertzog has coupled the question of transfer with that of economic pressure on the Territories in the form of restrictions on their exports of goods and labour to the Union. In 1924† he wrote on these lines to the then High Commissioner, Lord Athlone, in reference to the proposed transfer of the Bechuanaland Protectorate and Swaziland. In the end no additional restriction was imposed on Swaziland, but the weight embargo on Bechuanaland Protectorate cattle was raised from 800 lb. to 1,000 lb., the level which had recently been fixed for Southern Rhodesia. This, however, was not a reprisal for the failure to hand over the Protectorate, but a concession to the pressure brought to bear on the Union Government by the Union cattle industry. It should be added that the 800 lb. weight embargo, which still applies to Swaziland cattle, was imposed at the end of 1923 for similar reasons, and was then regarded by the Swaziland authorities as not detrimental to their interests, since cattle of a less weight could not be profitably exported to the Union.‡

2. So far as the Bechuanaland Protectorate is concerned the consequences of a restriction on the recruitment of labour for employment in the Union would be less serious than in the case of the other two Territories. When General Hertzog raised the same question in 1924 the High Commissioner§ wrote that the native labour question is of no particular importance because the recruiting for employment in the Union of natives who are domiciled north of 22 degrees south latitude is prohibited by the Union Government, and a reference to labour statistics shows that the maximum number of Bechuanaland natives employed in the Union in any year since 1910 is 4,774. As regards cattle, the whole of the northern portion of the Protectorate has for some time been under a Union embargo on account of foot-and-mouth disease in Southern Rhodesia, and an outbreak of this disease in the Protectorate has recently led to an extension of this embargo to the rest of the Territory. In these circumstances the Protectorate is already, for veterinary reasons, subjected to the maximum restriction on its exports which it is in the power of the Union Government to impose, and has nothing to gain or lose in the immediate future from any action of the Union Government in regard to its products. It is, however, worth while adding that under normal circumstances the Protectorate is less dependent on the Union than the other two Territories, having alternative markets for the cattle in the Belgian Congo and Northern Rhodesia, and being also in a position to draw its imports from Southern Rhodesia, with which it has a Customs Agreement, concluded in 1930, similar to its Customs Agreement with the Union, *i.e.*, providing for a uniform tariff and free interchange of products. The result of this Agreement has been a substantial increase in the Protectorate imports from Southern Rhodesia and a decline in its imports from the Union, which has seriously perturbed the Union authorities.‖ These factors may be of assistance in negotiating with the Union Government for a removal of the present embargo as soon as the present outbreak of foot-and-mouth disease has been stamped out.

3. Swaziland has at present no alternative market such as the Belgian Congo and Northern Rhodesia for its products, and exports all its cattle to the Union either for the Johannesburg market or for export overseas. Further, the effects of restriction on the recruitment of natives for employment in the Union would be felt seriously in Swaziland, where it is reckoned that at least 10 per cent. of the native population are on the average employed outside the Territory, principally in the gold mines. The question of the extent to which the economy of the Territory is dependent on this source of income is discussed in the Report of the Financial and Economic Mission, which expresses the opinion that "any serious restriction in the openings for obtaining work abroad would affect their (the natives) position seriously, and if it coincided with a bad harvest and a restricted market for cattle it would not be long before distress began to manifest itself."¶

The only other Swaziland industry which might be affected by General Hertzog's threats is the tobacco industry. This industry, however, is now linked up with the Union Co-operative system, which it was forced to enter two years ago under pressure

* No. 8. † *See* No. 20 in South African No. 1. ‡ D. 61284/23: not printed.
§ No. 20 in South African No. 1. ‖ No. 20. ¶ Paragraph 26 of Cmd. 4114.

from the Union Government. Prima facie it would seem difficult for the Union Government, after having brought the Swaziland tobacco industry into their own co-operative system, to impose an embargo on Swaziland tobacco.

Like the Bechuanaland Protectorate, Swaziland would not be wholly without a reply to such an embargo on its principal products, owing to its importance to the Union merchant and manufacturer as a market for their products. The High Commissioner has reported that at the Fiscal Conference of 1932 "the two representatives of the (Union) Department of Industries were very obviously concerned to preserve to the Union merchant and manufacturer free access to the markets of the Territories and, therefore, were not prepared to contemplate abolition or impairment of the Customs Agreement." He added: "As the anxiety of the Department of Industries to preserve the Customs Agreement seemed likely to afford a useful lever in eventual subsequent negotiations with the Department of Agriculture, I took an opportunity, to hint at the possibility, if our hand were forced, not only of supplying the requirements of the Bechuanaland Protectorate through Southern Rhodesia, but also of transferring Swaziland trade to Lourenco Marques, and even of introducing imports into Basutoland from oversea in bond."* (Basutoland, being an "island" within the Union is in a somewhat special position. It may well be that arrangements for imports from oversea to Basutoland in bond could hardly be worked without some co-operation by the Union Government. In the case of the Bechuanaland Protectorate and Swaziland this does not apply.) So far, then, as Swaziland is concerned, if the Union Government were determined to act on the lines of General Hertzog's letter in the event of Swaziland not being handed over, it would not be impossible in the last resort for the Territory to retaliate by imposing a heavy tariff on Union imports, and drawing its imports from or *via* Portuguese East Africa instead of the Union. In that event it would, presumably be necessary to make arrangements to "carry" the Swaziland producers for such a period as might be necessary before they found alternative markets for their produce, but in view of the fact that in 1931 the total value of the Territory's exports only amounted to about £65,000, of which £18,000 was accounted for by cotton and tin which, being exported to England and the Straits Settlements, would not be affected by the Union Government's measures, the cost of doing so would not be likely to be very great.

4. Basutoland's exports of cattle are negligible and no definite proposals have hitherto been made that her wheat, which accounted in 1931 for £90,000 out of £250,000 exports should be subjected to restrictions, though at the last Fiscal Conference the Union delegates stated that representations had been made by Free State farmers that Basutoland wheat was being sold at a price lower than that agreed upon between the millers and co-operative societies in the case of Union wheat, with detrimental effects in the Union wheat market.† The United Kingdom-Union trade agreement at the Ottawa Conference, under which the Union Government have undertaken not to lower the preference now accorded to United Kingdom and, if desired, Colonial wheat, would appear to have a bearing on the possibility of action by the Union Government in regard to Basutoland wheat. In the case of Basutoland's other staple export, wool, there is apparently no suggestion that the Union Government might impose restrictions.

Basutoland's principal export to the Union consists of labour, some 60,000 natives out of a population of 500,000 being normally employed in the Union, 30,000 of these going to the gold mines. The stoppage of this source of supply would obviously have such serious effects on the Union mining industry, particularly at this moment when the industry seems likely to expand, that it seems unnecessary, as the High Commissioner has already observed, to take the threat very seriously. Apart from this aspect, it is hardly conceivable that the Union Government should forbid recruitment from the Territories while continuing to permit recruitment from Portuguese East Africa, which supplies nearly twice as much mine labour as Basutoland and Swaziland combined.‡

5. On the whole, and in the light of the 1924 precedent, it would seem that General Hertzog's threat of stopping the recruitment of labour from the Territories need not be taken too seriously, and that this letter may be regarded as at least partly inspired by a desire to find a pretext for (*a*) perpetuating the embargo on the northern half of the Protectorate which existed at the date of the letter but which, so long as it was based on foot-and-mouth disease in Southern Rhodesia was theoretically liable to be withdrawn as soon as this disease had been stamped out; (*b*) the raising of the Swaziland weight restriction from 800 lb. to 1,000 lb., *i.e.*, to the Bechuanaland

* No. 20. † No. 19.
‡ *See* paragraph 798 of the Report of the Union Native Economic Commission.

Protectorate level. As regards (*a*) the Union representatives at the Fiscal Conference last year made it quite clear that there would be no question of an immediate withdrawal of this embargo,* and experience goes to show that once a restriction of this kind is imposed it becomes increasingly difficult as time goes on for the Government concerned to remove it owing to the vested interests which have grown up round it. As to (*b*), as Sir Alan Pim has already remarked, the farmers of the Union are always exerting pressure in that direction† and the Union Government may not be sorry to find a pretext for gratifying their wishes. In the event of their deciding to proceed on these lines, it is questionable whether the Territories concerned would have any effective means of resistance, since the maintenance of the Customs Agreement, even on this mutilated basis, would probably be better than a system of tariffs, necessarily involving increased restrictions on trade producing less revenue. The only effective argument that might be urged would be that, from the point of view of the Union Government, it is unwise to erect barriers which they may find it difficult to pull down if and when the time comes for transfer, and which, by embittering the inhabitants of the Territories against the Union, can hardly fail to postpone indefinitely the prospect of the transfer of the Territories, by the consent of their inhabitants, without which General Hertzog has stated in the Union Parliament that he would not desire them to come into the Union. In this connexion it may be mentioned that when General Hertzog was asked in 1926‡ whether he would be prepared, on the transfer of Swaziland, to abolish the existing restriction on the export of Swaziland cattle to the Union, he carefully avoided giving a specific guarantee that he would.

Dominions Office,
February, 1933.

10991/52.

No. 11.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 4.50 p.m., 15th July, 1933.)

[*Answered by No.* 16.]

No. 77. 14TH JULY. Native Advisory Council of Bechuanaland Protectorate yesterday passed unanimously following Resolution with a request for transmission to you.

Begins.—This meeting of Chiefs and Councillors present on behalf of their respective tribes of the Bechuanaland Protectorate records its protest and objections to incorporation of their territory into the Union of South Africa. He would ask that should the Imperial Government entertain the idea of such incorporation ample time and opportunity be given to make our representations on the intended change.—*Ends.*—HIGH COMMISSIONER.

10991/62.

No. 12.

GENERAL J. C. SMUTS (MINISTER OF JUSTICE, UNION OF SOUTH AFRICA)

to

MR. J. H. THOMAS (DOMINIONS OFFICE).

[*Answered by No.* 13.]

South Africa House, 73, Strand,
London, W.C.2, 28th July, 1933.

SIR,

WITH reference to your recent conversation with my colleague, Mr. N. C. Havenga, the Minister of Finance of the Union of South Africa, in regard to the proposed transfer of Basutoland, Bechuanaland, and Swaziland to the Union, I have the honour to submit to you the annexed memorandum which sets forth the views of the Government of the Union on the matter.

I have, &c.,
J. C. SMUTS,
Minister of Justice (Union of South Africa).

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* No. 20. † No. 129.

‡ *See* paragraph 10 of Enclosure 1 in No. 67 and p. 113 of South African No. 1.

Enclosure in No. 12.

MEMORANDUM ON THE PROPOSED INCORPORATION OF BASUTOLAND, BECHUANALAND, AND SWAZILAND IN THE UNION OF SOUTH AFRICA.

GEOGRAPHICALLY, Basutoland, the greater part of Bechuanaland, and Swaziland (hereinafter referred to collectively as the Territories) belong to the territory which constitutes the Union of South Africa, and ethnologically and racially the inhabitants of the Territories are indistinguishable from the inhabitants of the Union. In fact, in several instances members of the same tribe are settled on either side of the present political boundaries separating the Territories from the Union.

Historically also, two of the Territories belong to the Union. Basutoland was formerly part of the Cape Colony, and Swaziland was a protectorate of the Transvaal, and the line of demarcation between that part of Bechuanaland which forms part of the Cape Province on the one hand and the Bechuanaland Protectorate on the other, was quite arbitrarily chosen. It was merely a matter of convenience that it was not placed a few hundred miles farther to the north.

But the strongest ties of all between the Territories and the Union are the economic bonds which bind them inseparably together and make the Territories entirely dependent upon the Union.

The Territories have practically no other market than the Union for all their products and particularly for their vast labour supplies. These labour supplies are of vital importance to the Territories, especially Basutoland, which could not possibly maintain its population without the wages earned by its labourers on the mines and elsewhere in the Union. Most of the banking and other business in the Territories is controlled from the Union, and the Territories and the Union are already being dealt with as one entity for purposes of customs and excise because it is not feasible to deal with each Territory as a separate entity.

And yet, in spite of the fact that the Territories belong to the Union geographically, racially, historically, and economically, they are separated therefrom by purely artificial boundaries.

This separation has many disadvantages. Although Bechuanaland and Swaziland are treated as part of the Union for customs purposes, yet the Union Government can exercise no control over the administration of the customs laws in those Territories—a most anomalous state of affairs. Furthermore, as there are practically no immigration restrictions between the Territories and the Union, it is very difficult for the Union to prevent the influx of prohibited immigrants from abroad through Swaziland or Bechuanaland.

As regards Basutoland, it is desirable in the interest of the Union, as well as of Basutoland itself, that steps be taken on an extensive scale along the head-waters of several important rivers which arise in Basutoland and flow through the Union, to prevent, by means of afforestation and other methods, the erosion which is causing so much damage in the mountainous parts of the country. These steps might have to be taken on both sides of the border and could be carried out satisfactorily only by the Union Government.

The Union is vitally interested in the control of animal diseases in the Territories, and yet it cannot itself exercise any such control. With its extensive veterinary organization and greater resources, the Union can far better prevent or check the spread of animal diseases in the Territories and from there to the Union than the present Administrations of the Territories can do.

The illicit traffic in firearms and ammunition, the illicit removal of stock from quarantine areas, and many other offences committed along the borders between the Union and the Territories are facilitated by the political separation of the areas in question and could be much better controlled by one police force subject to one authority.

And lastly, as the natives in the Territories belong to the same stock as the natives in the Union and often form part of the same tribes, and as they all have similar interests it is essential that the native policy in the Union as well as in the Territories be laid down and controlled by one Government.

The anomaly and inconvenience of separating the Territories from the area which now constitutes the Union was fully realized as far back as twenty-five years ago, when the House of Commons passed a resolution expressing its confidence "that His Majesty's Government will welcome the adoption of provisions calculated to render possible the ultimate inclusion of the whole of British South Africa in a federal union."

This resolution was acted upon by the framers of the South Africa Act, 1909, for therein provision was made not only for the immediate unification of the four self-governing South Africa Colonies, and for the ultimate inclusion of Rhodesia in the Union, but also (in Section 151) for the eventual transfer of the Territories to the Union.

In dealing with this section when the Bill in question was before the House of Lords, the Secretary of State for the Colonies (the Earl of Crewe) correctly expressed the general feeling in regard to the matter when he stated that "it does not seem conceivable that for an indefinite future these areas should remain administered from here (i.e., from London) and that the new South African Union should have no lot or part in their administration."

Neither Section 151 nor any other part of the South Africa Act gives any clear indication of the time when the Territories should be transferred to the Union, but the Legislature obviously contemplated an early transfer. Otherwise no provision would have been made in 1909, in the Schedule to the Act, for a very special form of government of the Territories to be transferred, as it could well be foreseen that after effluction of a considerable period the social, cultural and economic conditions of those Territories might be so different from what they were when the Act was passed that the form of government laid down in the Schedule would be impracticable. This view is borne out by the attitude of the Secretary of State for the Colonies during the passage of the South Africa Bill. The Bill was first passed by the House of Lords, and at the committee stage Lord Courtney of Penwith moved an amendment to Clause 151, providing that a transfer of the Territories could only be effected "at the expiration of ten years from the establishment of the Union." In opposing this motion, the Secretary of State for the Colonies, the Earl of Crewe, stated that he had no reason to suppose—indeed, quite the contrary—that the existing South African Governments would agree to the ten years' limit proposed by the noble Lord, and that he thought they would raise the strongest objection to the insertion of any such provision. He said further: "From our own point of view we also object to it. If you say that no handing over shall take place for ten years, there is some case against the insertion of the Schedule at all. It might be argued and would, I think, be argued, that if at any rate for ten years, and possibly longer, no transfer could take place, it is somewhat premature to enter into the terms of transfer as we have done in the Schedule."

A similar amendment to that moved by Lord Courtney was later urged in the House of Commons by Mr. Keir Hardie, and this was also turned down by Colonel Seely (Under-Secretary of State for the Colonies) who was in charge of the Bill in that House.

It is therefore clear that those responsible for the passage of the South Africa Act anticipated that the Territories would be transferred to the Union within a comparatively short period.

And now after a lapse of more than two decades the Government and the people of the Union feel that the transfer is long overdue.

The Union producers resent the competition in their own markets of Bechuanaland or Swaziland livestock and dairy products, of Swaziland tobacco and maize, and of Basutoland wheat (which are, moreover, brought on to those markets by means of Union railways and motor transport at special, unremunerative rates), and have brought pressure to bear upon the Union Government to bar those products from Union markets in view of the fact that they come from Territories which are politically as distinct from the Union as if they were situate in a different continent. Moreover, many able-bodied Union natives now cannot find employment, so that they cannot maintain themselves and their dependants and require State assistance; and yet a large number of natives from the Territories are employed in the Union, thus ousting Union natives. If the borders of the Union were closed to native labourers from outside, there would be no unemployment among Union natives and the State would not be burdened with the cost of native unemployment relief.

There can be no doubt that the Union bears the brunt of the economic maintenance of the Territories, and it is felt that if the Territories are to be maintained by the Union

and to form part of the Union economically, they must also form part of it politically. The Union may find it difficult to continue the economic maintenance of the Territories, to its own disadvantage, unless they form part and parcel of the Union. If they are to remain politically separate, the Union Government may find it very difficult to resist the pressure brought to bear upon it to prevent their products from competing with Union products in Union markets.

10991/62.

No. 13.

MR. J. H. THOMAS (DOMINIONS OFFICE)

to

GENERAL J. C. SMUTS (MINISTER OF JUSTICE, UNION OF SOUTH AFRICA).

MY DEAR SMUTS, Downing Street, 4th August, 1933.

I HAVE now had an opportunity to read the memorandum which you sent to me in your letter of the 28th July* in regard to the question of transfer of the High Commission Territories to the Union.

I note that the memorandum deals with the matter mainly from the point of view of the administrative and economic advantage of transfer, and does not touch upon the points raised in the note which I handed to you at our discussion on the 21st July. No doubt you will be having these points further examined.

In this connexion I should call your attention to the statement made by Lord Strathcona, on behalf of the Government, in the debate in the House of Lords on the 26th July—see column 1127 in the enclosed Hansard report—and also to the passages in the debate in the House of Commons on the following day, which you will find in columns 2816-7, 2858, and 2868 of the accompanying Hansard report.

Yours, &c.,
J. H. THOMAS.

Enclosure 1 in No. 13.

LORD STRATHCONA AND MOUNT ROYAL: My Lords, I can only speak again by leave of the House, but as the noble Earl has referred to the question of transfer I think I ought to say that the question has been raised, as the noble Earl has said. This is a contingency which is provided for in the South Africa Act of 1909, Section 151 of which provides that the King, with the advice of the Privy Council, may, on Addresses from the Union Parliament, transfer such territory to the Union Government, and that upon transfer the Government is to be carried on in accordance with the terms of the Schedule to the Act. In view of this provision the possibility of the transfer of the High Commission Territories has naturally come up for discussion from time to time with the Union Government. Consideration of this question must be governed by certain pledges which have been given by successive Governments in the past and to which the present Government fully adhere.

In the first place, there is the pledge given in the course of the debate on the South Africa Bill that Parliament would be given an opportunity of discussing and, if they wished, of disapproving any proposal for transfer. Secondly, there is the pledge, which was repeated in this House in 1925, when the matter was last discussed here, that if His Majesty's Government should be asked to come to any decision in regard to any such transfer they will not make any decision until the native population and the white population have had a full opportunity of expressing their views. Thirdly, there is the assurance which has in the past been given to the natives, that His Majesty's Government would not support any proposal of transfer if it involved any impairment of such safeguards for native rights and interests, as the Schedule of the South Africa Act was designed to secure. I am aware that apprehensions have been expressed from time to time by the native communities in the territories on this subject, but the assurances to which I have referred are quite definite, and the noble Earl, I think, can rest assured that they are fully present to the mind of the Government.

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* No. 12.

Enclosure 2 in No. 13.

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MR. LUNN: . . . I want to mention another matter which is hardly a question of a self-governing dominion but which comes under the Dominions Office. It is the position and the future of the three African Protectorates which are under the Dominions Office It is important that we should know the attitude of the Dominions Office towards these three important and very extensive parts of the African Empire. The right hon. Gentleman will remember that in 1930 he took what I think was a very wise step. He separated the position of Governor-General from that of the High Commissioner, and he appointed a High Commissioner for these areas. I agreed with it, and agree with it to-day, and hope that it will continue, but I should like to see the High Commissioner have more power in his office than, I understand, he possesses at the present time. In 1930 a charter of liberty for the millions of natives was laid down by the Labour Government. That charter differs a great deal from the policy towards the natives of the Government of the Union of South Africa. We wish for them to remain under the direct rule of the Dominions Office, which I understand is the policy of the Government, rather than that they should be included in the Union of South Africa. We should regard the introduction of South African native policy into the Protectorates as disastrous. To hand them over to the Union of South Africa would be a great breach of faith. The other day I saw a book by Mrs. Hodgson and Mr. Ballinger, who have done very useful work in these Protectorates. This is one of the statements which they made upon this matter:—

> "The natives of the Protectorate are now as opposed to absorption by the Union of South Africa as they were 30 years ago to absorption by Rhodesia. They cling now as then to the Imperial connexion. To the native of Bechuanaland the transference of the Protectorate to the Union means the compromising of the whole of his future, the loss of all his hopes of remaining a free man, and of becoming a 'civilized' one. He clings to the liberal tradition of Britain as he dreads the illiberal tradition of South Africa."

But these Protectorates cannot remain as they are to-day. They are poor. They are depressed. They are a reservoir of cheap labour for the mines in the Union. What steps is the right hon. Gentleman taking to implement parts of the report of Sir Allen Pim whom we sent out to Bechuanaland to make a report, and whose report is now in his hands? Is he going to support organized recruiting, improved educational facilities, increased agricultural instruction and implement water schemes as is suggested in the report of Sir Allen Pim? Is the right hon. Gentleman also going to give more power to the High Commissioner to develop and open up new territories for cattle raising?

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MR. LUNN: If the right hon. Gentleman is able to tell me that the High Commissioner has full and complete powers in the matters I have mentioned I shall accept the statement. That is the position I want because I am a supporter of the idea of the High Commissioner and I know that we have a good man there, and I would like to see him take steps so that the report of Sir Allen Pim could be put into actual operation.

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MR. DAVID GRENFELL: . . . . I desire also to refer to the increasingly difficult plight of the natives in the native protectorates in South Africa. These people are living a simple life in their own country under very primitive pastoral conditions. They are enjoying but a very bare measure of subsistence, and there is ground for believing that their condition is getting seriously worse. Pasture is getting scarcer, and water supplies have run dry, while cattle disease and a number of other troubles beset the natives in the Protectorates of Somaliland, Swaziland, and Basutoland. We are anxious that the Dominions Secretary should see that whatever assistance can be given in the form of grants-in-aid to these people shall be forthcoming, and that, in addition, there shall be an assurance as to their position in relation to the Crown and to His Majesty's Government—that there shall be no transference of responsibility from the Government until these people have been consulted, and until the white population and the right hon. Gentleman's Department have been consulted.

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MR. THOMAS: . . . There is only one other question which I have to answer. With regard to Bechuanaland and the Protectorates generally, I have to indicate on behalf of the Government that the clear and specific pledges made not only by one Government but by many Governments will be kept in mind as far as the present Government are concerned.

10991/62.

No. 14.

DESPATCH

to

HIGH COMMISSIONER, SOUTH AFRICA.

(No. 308.)
(Secret.)

Downing Street, 24th August, 1933.

SIR,

I HAVE the honour to inform you that General Smuts and Mr. Havenga called at the Dominions Office on the 21st July in order to discuss with me, at their request, the question of the transfer of the High Commission Territories to the Union of South Africa.

2. At the conclusion of the discussion I handed to General Smuts the note of which I enclose a copy, and he undertook to submit his views later in writing. I enclose a copy of a letter* which has now been received from General Smuts forwarding a memorandum which sets forth the views of the Union Government on the subject: a copy of the reply† which I have sent to him is also enclosed.

I have, &c.,
J. H. THOMAS.

[10991/57.]

Enclosure in No. 14

NOTE.

In considering any suggestion for transfer of any of the South African High Commission Territories to the Union, account must be taken of the following considerations:—

(i) Pledges given by or on behalf of successive Secretaries of State to—
  (*a*) Parliament;
  (*b*) the inhabitants of the Territories.
(ii) The conditions prescribed in the Schedule to the South Africa Act, 1909.
(iii) The wishes of the inhabitants.

I. *Pledges given by His Majesty's Government in the United Kingdom.*

When the South Africa Bill was before the House of Commons the Under-Secretary of State for the Colonies stated on behalf of His Majesty's Government that—

> "the House may rest assured—and I have the full authority of the Government and the Prime Minister for saying so—that it will have the fullest opportunity of considering the matter before the transfer of the Protectorates"

At the later stage of the debate he stated:—

> "The wishes of the natives in these Territories will be most carefully considered before any transfer takes place."

At the same time the former assurance was repeated with an additional statement, that the House—

> "will have an opportunity of discussing, and, if they wish, of disapproving of the action of the Government."

In November, 1919, the following question was asked in the House of Commons:—

> "Whether His Majesty's Government are considering any alteration in the status of the Protectorate of Swaziland, Bechuanaland, and Basutoland; whether

* No. 12. † No. 13.

the inhabitants will be consulted before any change in the status does take place, and whether the House of Commons will have an opportunity of debating the matter before any action is taken."

The answer of the Under-Secretary of State for the Colonies was as follows :—

" The answer to the first part of the question is in the negative, and to the second and third parts in the affirmative."

In February, 1925, the following question was asked in the House of Commons :—

" Whether the Secretary of State for the Colonies can give an assurance that no steps will be taken to concur in any way with the incorporation of Bechuanaland or Basutoland or Swaziland in the Union of South Africa before an opportunity has been given to this House to record its opinion on this matter of our responsibility for and to the native races."

To which the Secretary of State made the following reply :—

" In accordance with the pledges given when the South Africa Bill was before Parliament, the House will have the fullest opportunity of discussing, and, if they wish, of disapproving, any proposed transfer of these Territories to the Union."

In the course of a statement in February, 1925, in the House of Lords, Lord Onslow stated on behalf of His Majesty's Government that if at any time His Majesty's Government should be asked to come to any decision in regard to any such transfer,

" they will not make any decision until the native population and the white population have had full opportunity of expressing their views, and any views they may express, and any representations which either the native population or the white population may make to His Majesty's Government will receive the most careful consideration before the Government come to any final decision in regard to the matter."

Reference may also be made in this connexion to the following statement made by General Hertzog in the Union Parliament on the 25th March, 1926 :—

" Our position has always been as a party, that we are not prepared to incorporate in the Union any Territory unless the inhabitants of the Territory are prepared to come in."

II. *The South Africa Act, 1909.*

Section 151 of the Act provides that the King, with the advice of the Privy Council, may on addresses from the Houses of Parliament of the Union, transfer to the Union the government of any of the territories, subject to the terms and conditions embodied in the Schedule.

The terms of the Schedule were drawn up by the South Africa National Convention and were accepted by that body and by the Parliament of the United Kingdom as embodying certain principles and safeguards to native rights long recognized as essential.

Three important features which may be noted are :—

(*a*) The provisions prescribing that no part of the native reserves may be alienated from the native tribes inhabiting the Territories (Section 14);

(*b*) The composition of the Commission charged with the duty of advising the Prime Minister in the administration of the Territories (Section 3);

(*c*) The provisions prohibiting the levying of any differential duties or imposts upon the produce of the Territories (Section 17)

The importance of the Schedule as a guarantee that the existing rights of the natives would not be prejudiced in the event of transfer was explained to the Swazi deputation in 1923 by the then Secretary of State. On this occasion the Secretary of State said :—

" I need hardly say that His Majesty's Government would not support in the House of Commons or elsewhere any proposal for transfer if it involved the impairment of such safeguards for native rights and interests as the Schedule to the South Africa Act was designed to secure."

Since the South Africa Act was passed, the constitutional position has been affected by the passage of the Statute of Westminster. In view of this Statute the Schedule to the South Africa Act can no longer be regarded as affording in itself a legal safeguard, though it is clear from what is stated above that transfer could only be made subject to agreement that the general scheme of the schedule would be maintained.

12

There are two provisions in the Schedule which require special consideration in this connexion, viz., (i) Section 20 which states that the King may disallow any law made by the Governor-General in Council by Proclamation for any territory, (ii) Section 25 providing that all Bills to amend or alter the provisions of the Schedule shall be reserved for the signification of His Majesty's pleasure.

Before any question of transfer could be considered it would be necessary to ascertain :—

(*a*) What the Union Government would propose to substitute for the provision relating to the power of disallowance. (This, at the time when the South Africa Act was passed, meant disallowance on the advice of His Majesty's Government in the United Kingdom.) And

(*b*) What alternative form of security could be provided in place of the provision as regards reservation. (At the time of the South Africa Act His Majesty would have been advised as to the Bills in question by His Majesty's Government in the United Kingdom.)

III. *The Wishes of the Inhabitants.*

In accordance with the pledges referred to above it would be essential to give both the native population and the white population of the Territory or Territories concerned full opportunity of expressing their views with regard to any proposal for transfer, and the question when and how this could be done would require very careful consideration. In this connexion account would have to be taken of the fact that the native policy in the Union is still the subject of discussion and will, it is understood, form the subject of future legislation. The natives of the Territories would naturally require to know how their interests were likely to be affected by any developments of native policy in the Union.

July, 1933.

10991/75.

No. 15.

GENERAL J. B. M. HERTZOG (PRIME MINISTER, UNION OF SOUTH AFRICA)

to

MR. J. H. THOMAS (DOMINIONS OFFICE).

[*Answered by No.* 17.]

Prime Minister's Office, Pretoria, 1st October, 1933.

MY DEAR THOMAS,

I AM very glad to hear from Smuts and Havenga that during their stay in London they have had an opportunity of discussing with you the question of the transfer of the native territories—Basutoland, Swaziland and the Bechuanaland Protectorate; and of submitting to you a short memorandum on the subject, which might be laid before your colleagues in the Cabinet.

The cession of these territories to the Union, has, as you know, ever since 1910 been looked upon, not only as finally decided upon, but also as one the actual performance of which could be expected within a comparatively near future. Hence the Schedule to the South Africa Act making provision for the transfer of the territories and their Government by the Union.

Already for some years now, the question of transfer has been more and more engaging the attention of the people of this country, and to-day, owing more particularly to economic considerations in connexion with Union markets and questions of stock-disease, it is very generally felt that the time has come for the Union to assume responsibility in connexion with these territories and to take them over.

I hope, therefore, that you have had time to give the matter your further consideration, and that you and your colleagues may find it possible to assist in bringing the matter to an early conclusion. It would, I feel sure, be very helpful if you could come out and inquire into matters on the spot: many a difficulty would disappear when looked at in the light of South Africa, and circumstances here.

I know how busy you are; but perhaps for that reason it may be all the more necessary that you pay South Africa a visit, combining health with business.

I need hardly assure you that you and Mrs. Thomas will be very welcome. We shall take good care of you. If I may make a suggestion as to time, I would say February to June.

Yours, &c.,
J. B. M. HERTZOG.

10991/52.

No. 16.

DESPATCH

to

HIGH COMMISSIONER, SOUTH AFRICA

(Bechuanaland Protectorate.)
(No. 381.)

Downing Street, 23rd October, 1933.

SIR,

I HAVE the honour to refer to Sir H. Stanley's telegram No. 77 of the 14th July,* transmitting a resolution unanimously passed by the Native Advisory Council of the Bechuanaland Protectorate on the question of the transfer of the Protectorate to His Majesty's Government in the Union of South Africa.

2. I should be glad if the attention of the Council could be drawn to the pledges which have been given in the past by successive Governments in regard to this matter, as set out and re-affirmed in the statements made on behalf of the present Government by Lord Strathcona in the debate in the House of Lords on the 26th July last and by myself in the debate in the House of Commons on the following day. Copies† of these statements are enclosed for convenience of reference.

I have, &c.,
J. H. THOMAS

10991/75.

No. 17

MR. J. H. THOMAS (DOMINIONS OFFICE)

to

GENERAL J. B. M. HERTZOG (PRIME MINISTER, UNION OF SOUTH AFRICA).

Downing Street, 27th November, 1933.

MY DEAR HERTZOG,

I BROUGHT before the Cabinet your letter of the 1st October‡ about the question of the transfer to the Union, of Basutoland, the Bechuanaland Protectorate, and Swaziland, and with it the memorandum sent to me by Smuts in July last.

You will, I expect, have seen the memorandum which I handed to Smuts earlier in the month in which were set out the various considerations which we are bound to take into account in connexion with this matter—including in particular the pledges which have been given both to Parliament and to the inhabitants of the Territories. You will, I am sure, agree that in view of these pledges it would clearly not be possible for His Majesty's Government in the United Kingdom even to consider the question of transfer without taking steps to ascertain the opinion of the population, both native and European, on the subject.

I now write to let you know that my colleagues and I, after fully discussing the position, feel that the present is not a suitable time for raising this question with the native population of the Territories, with a view to the submission of the matter to Parliament here, which, as you will see from the memorandum handed to Smuts, successive Governments have promised to consult before any decision as to transfer is taken.

I hope, however, that we may continue to have your friendly co-operation in dealing with the various economic and other problems with which the Territories are now faced. I feel sure that the difficulties mentioned in the memorandum which Smuts sent to me are not insuperable—I notice, for instance, that reference is made

* No. 11. † Not printed here. ‡ No. 15.

to the absence of immigration restrictions between the Territories and the Union, but I may mention that an Immigration Law for the Bechuanaland Protectorate was issued last year and a similar law is being issued in Swaziland. I am asking Stanley to consider the other points of this kind referred to in Smuts's memorandum.

I greatly appreciate your personal invitation to Mrs. Thomas and myself, and I should like to accept it if circumstances permitted, but at the moment the political and international situation is such that I fear that I cannot say with any certainty whether it will be possible for me to get away next year.

Yours, &c.,
J. H. THOMAS.

II. FISCAL RELATIONS BETWEEN THE UNION OF SOUTH AFRICA AND THE TERRITORIES.

20803/1.

No. 18.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA

(Received 26th April, 1932.)

(Basutoland.)
(Bechuanaland Protectorate.)
(Swaziland.)
(No. 216.)

High Commissioner's Office, Cape Town, 8th April, 1932.

SIR,

I HAVE the honour to transmit herewith, for your information, a copy of correspondence with His Majesty's Government in the Union regarding a suggestion which they have made that a round-table conference of representatives of the various Union Departments concerned and of the High Commission Territories should be held for the purpose of informal discussion of questions affecting the fiscal relations between the Union and the Territories. I also attach a copy of despatches from and to the Resident Commissioner of the Bechuanaland Protectorate.

2. You will observe that, for the reasons explained in my enclosed despatch to Colonel Rey, I have thought it advisable to agree to the Union Government's proposal for an informal conference.

I have, &c.,
H. J. STANLEY,
High Commissioner

Enclosure 1 in No. 18.

(P.M. 55/130.)

Department of External Affairs,
Cape Town, 10th February, 1932.

SIR,

As you know there have, from time to time, arisen some difficulties in connexion with the fiscal relations between the Union and the High Commission Territories. This matter has received the consideration of an Interdepartmental Committee which came to the conclusion that it would be a good thing if all these difficulties could be informally discussed at a round table conference of representatives of the different departments concerned and of those of the High Commission Territories.

The questions which have been brought to the notice of the Interdepartmental Committee were the Maize Quota Act, the import of cattle from Swaziland into the Union, and the price at which wheat is being sold in Basutoland. There may, perhaps, be other matters which you, from your side, would like to be discussed.

I will be much obliged to hear from you whether the idea of such an informal conference commends itself to you.

I have, &c.,
BODENSTEIN,
Secretary for External Affairs.

The Imperial Secretary,
Cape Town.

Enclosure 2 in No. 18.

(No. 384.)

SIR, High Commissioner's Office, Cape Town, 6th April, 1932.

WITH further reference to your letter No. P.M. 55/130 of the 10th February, I am directed to inform you that the High Commissioner has had under consideration, in consultation with the Resident Commissioners of Basutoland, the Bechuanaland Protectorate, and Swaziland, the suggestion of His Majesty's Government in the Union that a round-table conference of representatives of the various Departments concerned and of the High Commission Territories should be held for the purpose of informal discussion of questions affecting the fiscal relations between the Union and the Territories.

2. The High Commissioner will be glad to take part personally in the Conference and to arrange for the participation of representatives of the High Commission Territories. He regrets that, as the Resident Commissioners of Basutoland and the Bechuanaland Protectorate will be absent from South Africa on leave during the next few months, it will not be possible for them to be present, but he hopes that the Resident Commissioner of Swaziland and the Acting Resident Commissioners of Basutoland and the Bechuanaland Protectorate will be able to attend, and it is proposed that they should be accompanied by the Principal Veterinary and Agricultural Officers of the Territories and probably one other officer from each Territory. The Acting Imperial Secretary would also be present.

3. The High Commissioner desires me to suggest, for the consideration of Union Ministers, that in addition to the items specifically mentioned in your letter the scope of the conference might also include the discussion, on a purely informal basis, of such matters as—

(1) questions relating to trade between the Union and the Territories in (*a*) cattle and other stock, whether alive or in the form of meat, including weight restrictions, (*b*) other produce, *e.g.*, maize, wheat and tobacco;
(2) the movement of stock and other produce, including transport by the Road Motor Service of the Railway Administration where railway transport is not available;
(3) the possibility of devising machinery which would provide for prior consultation between the technical officers of the Union and the Territories in regard to common problems, so as to enable them to consider from time to time what action might be taken jointly for preventing the introduction and spread of animal diseases, and under what conditions and safeguards stock and other produce might be moved between the Union and the Territories; and
(4) any other matter which might possibly cause difficulties likely to hinder the promotion and development, on a mutually acceptable basis, of trade between the Union and the Territories.

His Excellency recognizes that any conclusions arrived at, and any recommendations which might be made, as the result of such informal discussions, could only take the form of suggestions for consideration, but he feels sure that an exchange of views between officers of the Union and the Territories on such matters would be very useful.

4. I am to suggest that the proposed conference might be held at Cape Town towards the end of April or early in May, and I should be obliged if you could advise me as soon as possible whether this would be convenient, and what date would be suitable.

I have, &c.,
SHIRLEY EALES,
Acting Imperial Secretary.

The Secretary for External Affairs,
Cape Town.

Enclosure 3 in No. 18.

(No. 4520.) Resident Commissioner's Office,
Mafeking, 19th February, 1932.

SIR, I HAVE the honour to acknowledge the receipt of Your Excellency's despatch No. 305 of the 13th February* transmitting copy of a letter from the Union Department of External Affairs suggesting that a conference should be held at Cape Town for the purpose of discussing questions affecting the fiscal relations between the Union and the Territories.

* Not received in Dominions Office.

2. I beg to confirm my telegram of yesterday's date in which I asked that Your Excellency might be good enough to postpone a decision in the matter until receipt of my despatch, in view of certain objections to the conference which had occurred to me, and which I desired to submit for Your Excellency's consideration.

3. I am not clear as to the scope which it is intended that the conference should enjoy; it is, I observe, stated that it should deal with fiscal relations, but as such questions as cattle imports from Swaziland are apparently to be included, it seems that it is intended to travel outside the limits of fiscal matters properly so-called. The point is of importance so far as this Territory is concerned.

4. The main issue between the Union Government and the Protectorate is the question of the restrictions on the export of our cattle. The importance of this question to the Bechuanaland Protectorate cannot be exaggerated, and it is because no conference between us could ignore such a matter that I deprecate very much the holding of this informal conference before the Ottawa Conference.

5. It would be futile for us to attempt to discuss the grievances under which we labour in regard to this matter at such a conference as is suggested; we have justice on our side but no power with which to compel it.

6. On the other hand His Majesty's Government have now, for the first time, a bargaining weapon in the shape of a 10 per cent. Import Tariff, which might be used to induce a greater measure of respect for the legitimate claims of the Protectorate.

7. It would appear therefore that the discussion of the cattle question would more suitably be carried on between His Majesty's Government and the representatives of the Union Government at Ottawa; and on that account I regard the proposed fiscal conference at Cape Town as premature and inopportune.

8. To raise this important matter at Cape Town would, as I have already said, be futile. Not to raise it might seem to imply that we had no grievances in the matter, and so enable the Union Government representatives at Ottawa to claim that they represented the agreed interests of the High Commission Territories as well as those of the Union, and thus prejudice the possibility of justice being obtained for our claims.

9. In this connexion, as I have already reported informally to Your Excellency, the European Advisory Council at their last session passed the following resolution:—

> "We desire to draw your attention to the forthcoming Imperial Conference at Ottawa, at which we understand the Colonies and Dependencies of the Empire will be represented as well as the Dominions, and to say that, in our opinion, it is of the utmost importance that the High Commission Territories, and particularly the Bechuanaland Protectorate, should be represented, and that the representative should be fully advised as to and conversant with the potential future of this Territory, more particularly with reference to cattle and other markets and the possibilities of reciprocal trade within the Empire."

10. I desire to support this resolution very strongly. If the High Commission Territories could be directly represented at Ottawa, preferably in the person of Your Excellency, their position would be sensibly improved *vis-à-vis* the Union Government, their claims would be far more likely to receive consideration, and the representatives of His Majesty's Government would be able to negotiate with the representatives of the Union Government with the advantage of the first-hand knowledge of the Territories' requirements possessed by their representative who would be available for consultation.

11. I need hardly say that in referring to the cattle question I am not dealing merely with the foot-and-mouth disease embargo. Our main grievance is the weight embargo, which was forced upon the Territory—in spite of the Customs Agreement—because we had not the power to resist it.

12. This weight embargo is a disaster of which the full effects are only now beginning to be felt. The reduction of the Protectorate's exports and the financial hardships thereby inflicted on the Territory have been bad enough. But as the years have passed the number of cattle affected by the embargo have appreciably increased, the calves of that time are now full-grown cattle, and the result is a large dead-weight cattle population of no use or value to the Territory. Not only are these cattle useless but they eat down a tremendous amount of grazing which causes many districts to be overgrazed and results in inadequate nourishment for the better type of cattle, reduction in their weight and in their milk supply.

13. The measure was a political and economic move for which there was no justification in equity, and which was opposed to an existing agreement; it was a flagrant example of the triumph of might over right. We do not even claim (as we have the right to do) that this embargo should be entirely abolished, but we do claim that it should be very materially reduced.

14. The treatment of this Territory in regard to the foot-and-mouth disease embargo was a veterinary excuse for a political object. The harshness and lack of fairness in dealing with this matter, and with questions arising out of it, such, for example, as the question of the removal of grain from the Tati and of hides from N'gamiland, are such as would not be tolerated between independent nations of the world, who happened to be members of the League of Nations.

15. Alone this Territory cannot obtain equitable treatment, and I feel, therefore, that the good offices of His Majesty's Government should be invoked at this very favourable opportunity, an opportunity which has not occurred heretofore and which may not occur again.

16. In both these matters I feel certain we should have the full support of Southern Rhodesia, who is, I understand, being represented by a delegate of its own.

17. For the above reasons, which I have endeavoured to state as briefly as possible, I beg to suggest that the Union Government be informed that the moment is not considered opportune for this proposed conference which it is suggested should be postponed until after the Ottawa Conference; that His Majesty's Government be invited to undertake the discussion of our grievances with the Union Government at the Ottawa Conference; and that a representative of the High Commission Territories be appointed to attend the Ottawa Conference to assist and co-operate with the representatives of His Majesty's Government in the discussion of all questions affecting their interests.

18. I would further point out that it would be a matter of very great inconvenience for a number of officers of this Administration to be absent from the Territory for a period as long as that which would necessarily be occupied by the proposed fiscal conference itself and the preliminary consultation with Your Excellency. The officers of this Administration concerned would certainly include the Chief Veterinary Officer and the Financial Secretary, who are at present more than fully occupied with a number of pressing matters, and in view of my impending departure to Europe, it would be extremely difficult for me to absent myself for any appreciable period at this juncture.

I have, &c.,
C. F. Rey,
Resident Commissioner.

His Excellency
The High Commissioner
Cape Town.

Enclosure 4 in No. 18.

(No. 384.)
(Confidential.)

High Commissioner's Office, Cape Town, 6th April, 1932.

Sir,

I have had under consideration, in the light of the observations which you and the Resident Commissioners of the other two High Commission Territories have submitted to me, the proposal of the Government of the Union, as communicated to you in my despatch No. 305 of the 13th February, that a round-table conference of representatives of the various Union Departments concerned and of the High Commission Territories should be held for the purpose of informal discussion of questions affecting the fiscal relations between the Union and the Territories. I enclose herewith a copy of a letter which I have caused to be addressed to the Union Secretary for External Affairs.

2. As I have explained to you unofficially it will not be possible to arrange for the High Commission Territories to be represented at the Imperial Economic Conference which is to be held at Ottawa. I am, however, in consultation with the Secretary of State with a view to ensuring that the interests of the Bechuanaland Protectorate and the other two Territories for which I am responsible should be borne in mind, and I am sure that the inhabitants of the Protectorate may safely leave their interests in the hands of the representatives of the United Kingdom, more especially as the Secretary of State, who has been kept fully informed of the serious difficulties of the Protectorate, will himself be present at the Conference.

3. You will observe from the enclosed letter that I have thought it advisable to accept the Union Government's proposal for an informal conference, and that I have suggested that it should take place at Cape Town towards the end of April or early in May. In making this suggestion I have been influenced by the following considerations:—(1) that it would have been inexpedient to decline to participate in informal discussions with representatives of the Union which may afford an opportunity of again putting forward the case of the High Commission Territories for a modification of the present restrictions upon trade with the Union; and (2) that it was very desirable that we should so far as possible ascertain whether there is any prospect of the Union Authorities adopting a more favourable attitude towards the development of trade between the Territories and the Union on a basis which would give the Territories free, or at any rate less restricted, access to the Union markets. It seems to me that, even if the conference should not prove entirely successful from this point of view, the information which would be gained thereby would be very helpful to the Secretary of State in the consideration of any steps which he might feel able to take on behalf of the High Commission Territories when questions regarding trade relations between the United Kingdom and the Union are under consideration at the Conference at Ottawa.

4. As regards the representation of the Territories at the proposed conference here, I am inclined to think that it might be advisable that the representatives from the Territories should be limited to the Resident Commissioner of Swaziland and the Acting Resident Commissioners of Basutoland and the Bechuanaland Protectorate, and the Chief Veterinary and Agricultural Officers who are intimately acquainted with the difficulties experienced by the inhabitants in the production and marketing of their produce, but if you should feel strongly that your Financial Secretary should also be present I should not wish to raise any objection.

5. I will send a further communication to you as soon as a reply to the letter which has been addressed to the Department of External Affairs has been received.

I have, &c.,
H. J. Stanley,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

20803/3.

No. 19.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 30th May, 1932.)

(Basutoland.)
(Bechuanaland Protectorate.)
(Swaziland.)
(No. 286.)
(Confidential.)

High Commissioner's Office,
Cape Town, 13th May, 1932.

Sir,

With reference to my despatch No. 216 of the 8th April* and telegram No. 44 of the 6th May,† I have the honour to forward herewith a copy of the Report of the Fiscal Conference between representatives of the Union of South Africa and the High Commission Territories, which was held at Cape Town on the 3rd and 4th instant.

The Report has been signed by Dr. Bodenstein, Secretary for External Affairs, on behalf of the Union, and by me on behalf of the Territories. I only received copies of it late yesterday afternoon, and it is not possible therefore for me to submit to you my observations upon it by to-day's ordinary mail. I hope, however, to be able to transmit my comments by next week's air mail.

I have, &c.,
H. J. STANLEY,
High Commissioner

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* No. 18

† 20803/2: not printed.

Enclosure in No. 19.

(Confidential.)

FISCAL CONFERENCE BETWEEN THE UNION AND THE HIGH COMMISSION TERRITORIES HELD IN CAPE TOWN ON THE 3RD AND 4TH MAY, 1932.

The Parties were represented as follows :—

THE UNION OF SOUTH AFRICA.

Dr. H. D. J. Bodenstein, Secretary for External Affairs.
Col. G. N. Williams, D.S.O., Secretary for Agriculture.
Mr. L. van Zyl Ham, Secretary for Mines and Industries.
Mr. J. D. Heddon, Commissioner of Customs and Excise.
Mr. J. Hendry, Department of Railways and Harbours.
Dr. D. H. Steyn, Economist, Department of Mines and Industries.

THE TERRITORIES.

Sir H. J. Stanley, G.C.M.G., High Commissioner.
Mr. S. Eales, C.B.E., Acting Imperial Secretary.

BASUTOLAND.

Mr. F. L. Foord, Acting Resident Commissioner.
Mr. L. G. Iascombe, Financial Secretary.
Mr. F. A. Verney, O.B.E., Principal Veterinary Officer.
Mr. L. Wacher, Agricultural Officer.

BECHUANALAND PROTECTORATE.

Captain R. O'M. Reilly, Acting Resident Commissioner.
Mr. R. E. Goodman, Financial Secretary.
Mr. W. H. Chase, O.B.E., Chief Veterinary and Agricultural Officer.

SWAZILAND.

Mr. T. Ainsworth Dickson, C.M.G., M.C., Resident Commissioner.
Mr. J. R. Armstrong, Financial Secretary.
Mr. W. A. Elder, O.B.E., Principal Veterinary and Agricultural Officer.

The Conference unanimously agreed to submit the following report :—

I. *Percentage Payments of Customs and Excise Duties to High Commission Territories.*

The question of the adequacy or otherwise of the percentage payments of customs and excise duties to the High Commission Territories was discussed.

The basis of payment, as laid down in the Schedule to the South Africa Act, 1909, was incorporated in the Customs Agreement between the Union and the Territories, 1910, as amended by the Protocols of 1911 and 1913.

Under this Agreement the Territories agree to maintain a tariff similar to that existing in the Union, and the pursuance by the Union Government of a definitely protective industrial policy has resulted in the reduced consumption of imported goods in the Territories and their replacement by Union products. If the Territories were independent fiscal entities, they would be entitled to levy customs duties on such products, now admitted free of duty.

A review of the basis of payment could be made only by recording the imports both of South African and oversea goods into each Territory over a considerable period, with the reinstitution of customs entry or removal forms. The results would not, under present conditions, be a satisfactory reflex of normal trade, and the expenditure would not be justified.

The Conference, taking these factors into consideration, is of opinion that, so long as the same tariff is maintained by the Union and the Territories and there is a free interchange of produce and manufactures, and subject to the special reservations in the case of open stock trade between Bechuanaland Protectorate and Southern Rhodesia, dealt with in the next succeeding paragraphs, the present basis of payment should not be disturbed.

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II *The Bechuanaland-Southern Rhodesia Customs Agreement.*

1. The Agreement of 1910 was modified by an exchange of notes in April, 1930, whereby Bechuanaland Protectorate was enabled to conclude an Agreement with Southern Rhodesia providing, *inter alia*, for the admission of imported goods from open stocks in Southern Rhodesia into the Protectorate at the Southern Rhodesian rates of customs duty.

Primage is recognized by the Southern Rhodesian Government as not being a customs duty within the meaning of their Agreement with the Union, and it therefore falls to the Protectorate Administration to collect primage on open stock removals from Southern Rhodesia, and to pay the amount over to the Export Subsidies Account, from which subsidies are paid or Protectorate products exported.

The administration is credited with a share of the Union's total primage collections on the same basis as customs duties, estimated at some £5,500 per annum, and the primage on open stock removals from Southern Rhodesia is estimated at £850 on the 1931 figures.

These removals will doubtless increase, as a result of the higher cost of open stocks in the Union due to the new levies of primage and exchange dumping.

A similar position exists in regard to exchange dumping duties, the respective estimates being £700 and £150 per annum.

The Conference is of opinion that, in the event of the Protectorate Administration deciding not to collect primage and exchange dumping duties on open stock removals from Southern Rhodesia, it would be equitable to deduct the sums so leviable from the payments due and payable by the Union Government from the general accounts.

2. The effect of the Bechuanaland-Southern Rhodesia Agreement on industries established in the Union may prove of greater importance than the matter of open stock removals. Under the lower rates of the Southern Rhodesia tariff, it is possible to import into the Protectorate certain classes of goods to which very high or prohibitive duties apply in the Union at prices lower than it is possible for the Union product to be obtained, and in these classes the Union industries are under a severe handicap.

The Customs Agreement as originally framed contemplated free and unrestricted interchange of all goods under a uniform tariff, and the Conference is of opinion that when the present restrictions on such free interchange are removed, consideration should be given to the question of the discontinuance or modification of the Bechuanaland-Southern Rhodesia Agreement.

In this context the High Commissioner, while entirely in accord with the aim of the establishment of a completely effective Customs Union between the Union of South Africa and the High Commission Territories, desires to record his view that such a Customs Union would imply not only the absence of any differentiation on economic grounds between any of the contracting parties in respect of the marketing of their products within the area of the Customs Union or in respect of the transit of their products for the purposes of export, but also the right of the High Commission Territories, as contracting parties, to be consulted by the Union of South Africa, as visualized in paragraph VI of this report, in the determination of any changes in the tariff of the Union of South Africa. The High Commissioner does not contemplate that this right should be utilized in such a way as to obstruct the freedom of the Union of South Africa to adopt any tariff policy which the Union of South Africa might consider expedient in its own interests, but he represents that if any operative or prospective item in the tariff of the Union of South Africa should have or appear likely to have an injurious effect on any important interest of any of the High Commission Territories the retention or introduction by mutual agreement of any possible measures of relief should not be excluded from consideration merely on the ground that such measures might involve to the extent of their application some relaxation of the principle of the maintenance of a completely uniform tariff throughout the whole area of the Customs Union.

III. *Customs Control on the Portuguese-Swaziland Border.*

Consideration was given to the question of the effectiveness of customs control on the Portuguese-Swaziland border. The Swaziland representatives explained the measures at present taken on the Portuguese border, which appeared to the Conference to be satisfactory. An assurance was also given by the Swaziland representatives that the Administration would readily consider any additional measures which might be suggested for the purpose of making such control more effective.

IV *Restrictions on the Introduction of Cattle from the High Commission Territories.*

(A) With reference to the restrictions at present imposed upon the introduction of cattle from the High Commission Territories, other than with the object of preventing the introduction of disease, the Conference has considered the representations made by the respective authorities:—

(1) While the introductions of cattle from Basutoland are considerable in number it would appear that this is due largely to a to-and-fro traffic, comprising young oxen bought or exchanged by Union farmers for ploughing, lobola cattle, and stock, the property of natives moving backwards and forwards.

The Conference feels that the *status quo* is of mutual benefit and does not recommend any disturbance of it.

(2) With regard to Swaziland, the representatives of that Administration urge that the conditions which influenced the present differentiation as compared with the Bechuanaland Protectorate, remain unaltered, and that to raise the weight limit would inflict a heavy blow upon the people of Swaziland, whose economic interests are bound up with those of the Union.

The Conference recommends these representations to the favourable consideration of the Union Government.

(3) The representatives of the High Commission Territories have strongly affirmed their protest against the curtailment of the principles of free trade as affected by the present restrictions, which they had unwillingly agreed to owing to force of circumstances. They urge that a return be made to the principle of free interchange of products and, while they realise the difficulties which would be entailed by any immediate modification, they nevertheless urge that favourable consideration be given to ways and means of attaining this object.

They freely admit that Union markets should be protected against flooding of supplies, particularly of cattle of inferior quality, and if any scheme of orderly marketing and regulation of supplies should be introduced they would, even though this might involve a departure from the principle of unrestricted exchange of products contemplated in the Customs Agreement, willingly accept such restrictions as may be considered necessary in the interests of the industry as a whole, and co-operate to the fullest extent in their enforcement, provided that such restrictions are applied without discrimination against any party to the Customs Agreement.

The Conference feels that the request is reasonable.

(4) In view of the considerations set forth above the Conference agrees to recommend that, although it might not be possible to effect an immediate removal of all such economic (as distinguished from veterinary) restrictions imposed by the Union on the importation of cattle from the High Commission Territories into its markets as involve a departure from the principle of free interchange of products which is fundamental in the Customs Agreement, a joint effort should be made, so soon as circumstances permit, so to regulate the cattle trade within the area covered by the Customs Agreement as to substitute for the present system, by such stages as might be practicable, but without any reasonably avoidable delay, a fair distribution of the trade throughout the whole area of the Customs Agreement irrespective of political boundaries, and that in the meantime the existing economic (as distinguished from veterinary) restrictions imposed by the Union should not be increased or extended.

(5) An arrangement as contemplated in the last two preceding paragraphs shall, when come to, not be deemed to be a departure from the principle of free exchange of goods with its corollary of a uniform tariff as referred to in Section II of this report.

(B) With reference to the restrictions imposed upon the introduction of cattle from the High Commission Territories with the object of preventing the introduction of diseases, strong representations were made by the delegation of Bechuanaland Protectorate that the foot-and-mouth disease restrictions bear very severely on their cattle industry, and they urged that facilities should be given for the marketing in the Union of their cattle from the area affected. They stated that they are maintaining an effective

cordon on the Rhodesian border and that the outbreaks are so far remote from their border that, on veterinary grounds, the maintenance of the restrictions could not be justified.

The Secretary for Agriculture pointed out that the Union had modified some of the restrictions recently in regard to certain vegetable products. If special requests were made in regard to any other vegetable products, particularly cereals, restrictions upon which were proving a hardship, the question would again be considered. With regard to meat, the Government would be prepared to allow meat from the Northern Protectorate to come through the Union in sealed trucks for export. No hope could be held out for the present in regard to the admission of cattle from the Northern Protectorate to the Union markets, but if the foot-and-mouth disease position did not get worse Government would be prepared in the event of export overseas to agree, under certain conditions, to the transit of cattle from the Northern area to the coast in sealed trucks. Mr. Chase undertook to explain to Col. Williams in detail certain proposals for the liberation of a portion of the present embargo area, with a view to the possibility of their further consideration on the return of the Minister to Pretoria.

V *Price of Basutoland Wheat.*

It was explained by the Union delegates that representations had been made by Free State farmers that Basutoland wheat was being sold in the Union at a price lower than that agreed upon between the millers and co-operative societies in the case of Union wheat with detrimental effects to the South African wheat market.

The Basutoland delegates stated that the average price of Basutoland wheat was 18s. 6d. per bag, which price, they contended, was commensurate with the price of 22s. 6d. for first-grade Union wheat, taking into consideration the grade of and the quantity of foreign matter in Basutoland wheat; the percentage of foreign matter being comparatively high owing to Basutoland wheat being mostly floor-threshed.

The Union delegates said that, even if it were assumed that 18s. 6d. was a reasonable price for Basutoland wheat, there appeared to be some doubt whether wheat of Basutoland origin was invariably sold at that price, and they suggested that this aspect of the matter might be further investigated. The Basutoland delegates expressed their willingness to ascertain the facts in so far as it was in their power to do so, and it was agreed that the matter should be further discussed between them and the Union Department of Agriculture.

VI *Consultation between Union and High Commission Territories in regard to matters bearing on Customs Agreement.*

The Conference recommends the adoption of some system of consultation under which one party to the Customs Agreement now prevailing between the Union and the High Commission Territories would, whenever possible, keep the other party informed of administrative or legislative measures it proposes taking, wherever such measures, having a bearing on the Customs Agreement, are likely to affect the economic interests of the other, so that the latter may be given an opportunity of making such representations as it may deem meet before the proposed measures are definitely decided upon.

The Secretary for Agriculture wished to place on record that the technical officers of his Department have always had a free hand to consult with their colleagues of the neighbouring Territories.

H. D. J. Bodenstein.
H. J. Stanley.

In addition to the subjects mentioned in the report of the above Conference the following matters were also discussed:—

1. *The Maize Quota Act.*—The Union delegates explained that this item on the Agenda is no longer of any importance as a Bill has been introduced into Parliament which provides that the removal of maize to the High Commission Territories will not be considered as export for the purposes of the Quota Act. It was explained that, as Swaziland did not produce sufficient maize for her own requirements, there could be no question of inviting the High Commissioner to promulgate legislation requiring Swaziland growers of maize to set apart any quota for export.

2. *Importation of Bones from Swaziland.*—The Swaziland delegates drew attention to the fact that the Union regulations allow the importation of bones only by rail. As there are no railways in Swaziland they wish to be allowed to convey the bones over the border to the nearest railway station about 200 yards across the border, by other means of transport.

The Swaziland authorities will make representations in connexion with this matter to the Union authorities concerned.

3. *Illegal Movement of Stock.*—The delegates of the Territories stated that the practice of the Union authorities to shoot cattle illegally entering the Union, causes severe hardship in some cases, and they pleaded for a more lenient application of the regulations in appropriate cases.

The Union delegates pointed out that relaxation of the existing practice would encourage smuggling and that the Government would therefore not modify its policy. They stated that there could be no objection on the part of the Union Government to similar action being taken by the Territories.

4. *Export of Meat slaughtered in Bechuanaland Protectorate.*—The Bechuanaland representatives drew attention to the fact that the slaughtering plant erected by the Imperial Cold Storage in the Territory had remained unused owing to the prohibition of the import of meat into the Union and the prohibitive rates charged by the Railways for the conveyance of meat to the ports. They wished to know whether the Railway Administration would be prepared to reduce the rates charged for meat intended for export as an increase in exports would relieve the local markets.

Mr. Hendry explained that the rates had been fixed many years ago and that the Railway Administration would be prepared to reconsider the position in the light of present day conditions if so requested.

Mr. Hendry undertook to have the matter brought under review of the Minister of Railways and Harbours.

H. D. J. BODENSTEIN.
H. J. STANLEY.

20803/4.

No. 20.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 30th May, 1932.)

(General.)
(No. 289.)
(Confidential.)

High Commissioner's Office,
Cape Town, 16th May, 1932.

SIR,

In my despatch No. 216 of the 8th April* I had the honour to inform you that I had accepted the proposal of the Union Government for an informal discussion of questions affecting the fiscal relations of the Union and the High Commission Territories at a round-table Conference between representatives of the Union Departments concerned and representatives of the three Territories.

2. The Conference met at Cape Town on Tuesday, the 3rd May, and concluded its deliberations in the evening of the following day. You will have learnt from my telegram No. 44 of the 6th May† that I consider the result to have been as satisfactory to the Territories as, in all the circumstances, could have been expected. A copy of the report of the Conference, as signed by Dr. Bodenstein, Secretary for External Affairs, on behalf of the representatives of the Union Government and by myself on behalf of the Territories was forwarded to you under cover of my Confidential despatch No. 286 of the 13th May.‡

3. The names of the participants in the Conference are prefixed to the Report. The Union Government very courteously placed several motor cars at the disposal of the representatives of the Territories, and the Prime Minister entertained all the members of the Conference at luncheon in the dining-room of the Houses of Parliament on the 3rd May. Due acknowledgment has been made orally and by letter.

* No. 18. † 20803/2 not printed. ‡ No. 19.

4. The representatives of the Territories had arrived in Cape Town a few days before the opening of the Conference in order to have an opportunity for preliminary confidential discussion with the Acting Imperial Secretary and myself. At the Conference I undertook the general conduct of the case for the Territories, but left points of detail to the several delegates, and I received very valuable help and support from them. A room in the Prime Minister's Office was made available for the meetings of the Conference. I gathered that, on grounds of status, it had been proposed to invite me to preside, but I thought it politic to move Dr. Bodenstein into the Chair. He appeared to appreciate this as a compliment, and I think it had a perceptible effect on the atmosphere of the proceedings. Incidentally this arrangement left me free to take an active part, while it imposed on Dr. Bodenstein the restraint appropriate to the occupant of the Chair.

5. I entered the Conference with some apprehension that the object of the Union Government in convening it might prove to be the initiation of proposals either for the replacement of the present Customs Agreement by an instrument less palatable to the Territories or for some extension of the restrictions now imposed upon access to the markets of the Union. I had little or no hope of being able to secure any substantial improvement of conditions, and my chief concern was to forestall further prejudice. I took advantage, therefore, of the informality of the proceedings to state the grievances of the Territories with outspoken frankness, and I succeeded in placing the Union representatives, and especially Colonel Williams, the Secretary for Agriculture, on the defensive. I pointed out very emphatically that such restrictions as the existing weight embargoes on cattle from the Bechuanaland Protectorate and Swaziland were wholly inconsistent with the principle of free interchange of products, and that the High Commissioner had acquiesced in them only under the pressure of what amounted in effect to *force majeure*. I need not trouble you with the details of the argument. Its general purport and its result are reflected sufficiently in the report of the Conference. You will observe that, in respect of the cattle trade (the vital issue), the principle of free interchange is reaffirmed explicitly in paragraph IV A of the Report, not merely as an abstract theory, but as an object of policy to be brought into full practical effect, by progressive stages but without any reasonably avoidable delay, as and when circumstances may permit. If—as I hope, and as Dr. Bodenstein seemed to anticipate (though he was not in a position to give a pledge)—the Report is accepted by the Union Government, the Territories will be on stronger ground than heretofore in protesting against differential treatment in the markets of the Union and in claiming relief from restrictions which conflict with the principle of free interchange, and in the meanwhile the Report recommends definitely that existing economic restrictions should not be increased or extended. References to the principle of free interchange as generally applicable will be found in paragraph I and paragraph II (2) of the Report.

6. To my mind, this insistence on the principle of free interchange is the most important and valuable feature of the Report, and has given it a character which, probably, was not foreseen by the Union representatives. When I perceived that the course of the argument had made it difficult for the Union representatives to evade admission of the principle, I concentrated my efforts on securing its unqualified asseveration in the Report. My task was lightened, not only by such success as had been achieved in converting the role of Colonel Williams from that of an aggressor to that of an apologist, but also by two independent factors. The one was that the two representatives of the Department of Industries were very obviously concerned to preserve to the Union merchant and manufacturer free access to the markets of the Territories and, therefore, were not prepared to contemplate abolition or impairment of the Customs Agreement, and the other was that Colonel Williams—being obliged consequentially to abandon any hope which he might otherwise have cherished of the exclusion of our cattle from the Union—was under the necessity of seeking our co-operation in the proposed new scheme of his Minister for regulating the supply of cattle to the several markets of the Union.

7. As regards the first of these two factors, it was manifest from the outset that the Union Government were seriously perturbed by the recent decline in the importations of Union goods into the Bechuanaland Protectorate and the increase in imports through Southern Rhodesia. This process, so far as displacement is involved, has been made possible, of course, by our separate Customs Agreement with Southern Rhodesia (to which, at the time of its conclusion, Mr. Havenga had signified his consent), and it has been made inevitable by the disparity of prices due partly to the lower scale of Customs duties under the Rhodesian tariff and partly and principally to the circumstance that purchases from Rhodesia are payable in

sterling. Mr. van Zyl Ham was disposed to urge that such an arrangement as our Customs Agreement with Southern Rhodesia was repugnant to the principle of a Customs Union based upon free interchange and a uniform tariff. I pointed out that the Protectorate had imposed no restrictions whatever on imports from the Union, and that the diminution of such imports was due very largely to the fiscal policy of the Union in respect of currency and of tariffs, and, apart from these considerations, to the reduced purchasing power of the people of the Protectorate as a direct result of the restrictions imposed by the Union on their export of cattle, their staple industry. If we were to be treated as members of a Customs Union with all its implications in respect of separate Customs Agreements with other countries, two conditions would have to be fulfilled. In the first place, the Customs Union would have to be real and not merely nominal. There could be no real Customs Union so long as the one party imposed economic restrictions on the access of the exports of the other party to its markets. Colonel Williams had made it abundantly clear that the Union Government were not prepared to withdraw all their economic embargoes on our cattle forthwith. In the second place, the Territories, as a contracting party, would have to claim the right to be consulted, and to have their interests considered, in the framing of the uniform tariff. As an example of where the shoe pinched at present, I cited the item of Kaffir blankets. The Union, without any reference to the Territories, had imposed a prohibitive duty on Kaffir blankets in order to protect her own local industry. The protection of that industry was of no direct or indirect advantage to the Territories. The Territories had lost their share of the Customs duties which would have been levied on such blankets by the Union if the importation of them had not been prevented by the prohibitive duty, and but for the Customs Agreement with Southern Rhodesia our natives in the Bechuanaland Protectorate would have had to pay an uneconomic price for their blankets—solely for the benefit of the Union manufacturer—while concurrently they were being impoverished by the Union embargo on their cattle. In such an instance, while we could not and would not expect to interfere with the fiscal policy of the Union, it would surely be reasonable to claim a compensatory concession, whether by means of some separate tariff arrangement or otherwise. The force of this argument appeared to be admitted. The result of the whole discussion on this point will be found embodied in paragraph II (2) of the Report. I thought it desirable to qualify my acceptance of that sub-paragraph by the statement of my views which is appended to it. I might mention in passing that, as the anxiety of the Department of Industries to preserve the Customs Agreement seemed likely to afford a useful lever in eventual subsequent negotiations with the Department of Agriculture, I took an opportunity, in the course of the proceedings, to hint at the possibility, if our hand were forced, not only of supplying the requirements of the Bechuanaland Protectorate through Southern Rhodesia, but also of transferring Swaziland trade to Lourenço Marques, and even of introducing imports into Basutoland from overseas in bond. At the same time, however, I made it perfectly clear that I was not seeking any departure from mutually satisfactory fiscal relations with the Union.

8. Reverting now to the cattle trade, the position was that Colonel Williams, recognizing that the Customs Agreement had to be maintained, had to accept the principle of free interchange as an object of practical policy. When he sounded us as to our willingness to co-operate in a scheme for regulating supplies of cattle to the several markets in the Union, I told him that I appreciated the importance of such regulations in the common interest of all cattle breeders, provided that a workable scheme could be evolved; I said that we should be ready to co-operate on the understanding that there would be no differentiation on economic grounds between Union cattle and cattle from the Territories. I knew, however, that with all the best will in the world the Union Government could not concede this immediately. They cannot afford at this juncture to incur any avoidable opposition from their farmers. My purpose in pressing for the total withdrawal of all economic restrictions forthwith was twofold: first, to stave off the risk of additional or aggravated embargoes, and secondly, to lead Colonel Williams to the compromise whereby the principle of free interchange is established as a practical purpose, but its execution is temporarily postponed. More than that I could not hope for, and even if I had persuaded Colonel Williams to agree to some immediate relaxation of restrictions, there would have been no prospect whatever of the confirmation of such an arrangement by his Government. My real aim was to establish, for future use, a formula which would have a reasonable chance of immediate acceptance by Union Ministers. The formula which was ultimately agreed upon, if it is accepted by Ministers, should eventually prove a serviceable weapon in our armoury.

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9. We have, in my opinion, a very real grievance in regard to the maintenance of the veterinary embargo imposed on the Northern portion of the Bechuanaland Protectorate on account of foot and mouth disease in Southern Rhodesia. You are aware of the facts, and I need not reiterate them here. At the Conference (see paragraph IV B of the Report), the representatives of the Protectorate and I indulged in some very plain speaking on this subject. Colonel Williams seemed uncomfortable in his efforts to defend an indefensible position, but manifestly he had received very unambiguous instructions and was not open to conviction. He virtually promised to relax the restriction on the movement of grain from the embargo zone to the Southern Protectorate, and to allow cattle from the embargo zone to be railed in sealed trucks to Durban for export, provided that a market for export can be found—there is still some possibility of an Italian contract—but he declined point-blank to consider any opening of the Johannesburg market to such cattle, now or in the near future, or any immediate reduction of the area of the embargo zone, though he said that this latter point could be brought up again when the Minister had returned to Pretoria and could consult personally with his veterinary advisers. The prospect is not hopeful, but we will return to the charge after Parliament has risen and when the Colesberg by-Election is over.

10. We had no difficulty in persuading Colonel Williams to drop the suggestion that the embargo weight of Swaziland cattle should be increased from 800 lbs. to 1,000 lbs., as required of cattle from the Bechuanaland Protectorate (see paragraph IV A.2 of the Report). We failed entirely, however, to obtain any encouragement for our appeal that the Union Government might reconsider their refusal, as reported in my despatch No. 122 of the 2nd March,* to allow slaughter cattle travelling from Swaziland to the Johannesburg market to be moved to the railway at Breyten by motor transport. Colonel Williams made a gallant attempt to justify this refusal on veterinary grounds, but when pressed, he finally said that he had received definite instructions and could not discuss the matter further. It seemed useless to pursue it at the Conference, but I shall revive it at Pretoria. I suggested to Dr. Bodenstein, and he agreed, that as this purports to be a purely veterinary question, there was no need to include a reference to it in the report of the Conference. If it had been included, I should have felt obliged to record a protest, which, without serving any useful purpose, might have impeded Ministerial acceptance of the Report.

11. In regard to Basutoland cattle (paragraph IV A. 1 of the Report) and Basutoland wheat (paragraph V) the proceedings were satisfactory, and the preservation of the *status quo ante* is recommended.

12. Paragraph II 1 of the Report embodies a decision which, however unpleasant, was inevitable. It involves a deduction at the rate (on the basis of such figures as are available at present) of about £1,000 per annum from the cash payments of the Union to the Bechuanaland Protectorate. These deductions represent the amount of Primage and Exchange dumping duty which we might (but do not) collect on imports from open stock in Southern Rhodesia. If we collected these duties, we should be obliged (under the arrangement made with the Union Government when we concluded our separate Customs Agreement with Southern Rhodesia) to pay the proceeds to the Union. The Union Government probably could insist that we should impose and collect the duties, and it would be in their interest to do so, as the consequential increase in the cost of such goods imported from Southern Rhodesia would *pro tanto* give the Union merchant and manufacturer a better chance of competing in the Protectorate market. It suits us better, however, to lose the £1,000 than to increase the cost of living in the Protectorate and incidentally to transfer trade from the United Kingdom to the Union, and the Union Government (if they accept the relevant recommendation in the Report) will have acted considerately. We certainly have no cause for complaint, though we should have been glad if the point could have remained unnoticed. Mr. Heddon originally contemplated a similar arrangement in respect of the recently imposed Customs surtax, but the Acting Imperial Secretary succeeded in satisfying him (in informal friendly conversation) that the surtax was an ordinary Customs duty which, under existing arrangements, the Union could not require us to levy on goods imported from open stock in Southern Rhodesia.

13. Paragraph VI of the Report was drafted by Dr. Bodenstein. It recommends, in conformity with my wishes, the adoption of some system of regular consultation in regard to measures, bearing on the Customs Agreement, which are likely to affect the economic interests of either party to the Agreement.

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* 10187/4: not printed.

14. The remaining items of the Report and its annexure are self-explanatory.

15. The Report and its annexure are at present to be treated as confidential. The decision whether anything—and, if so, what—should be published stands over until the Report has been considered by the Union Government.

I have, &c.,
H. J. STANLEY,
High Commissioner

III. CAPRIVI STRIP.

10707/20.

No. 21.

DESPATCH

to

UNION GOVERNMENT.

(No. 48.)

Downing Street, 26th February, 1932.

SIR,

I HAVE the honour to refer to your despatch No. 58 of the 6th March,* stating that His Majesty's Government in the Union of South Africa accept the views of His Majesty's Government in the United Kingdom as to the interpretation to be placed on Article 3 of the Anglo-German Agreement of the 1st July, 1890.

2. His Majesty's Government in the United Kingdom note that His Majesty's Government in the Union of South Africa consider that a very awkward boundary would be created if the principle which is to be applied to the eastern section were applied to the section west of the 20-mile point to the south of Andara. They are naturally anxious that any practical inconvenience should be obviated, so far as possible, and in order to avoid the difficulties of such a boundary, they are ready to accept the proposal made by His Majesty's Government in the Union of South Africa that west of that point the boundary should follow a parallel of latitude to the western boundary.

I have, &c.,
J. H. THOMAS.

10707/20.

No. 22.

DESPATCH

to

HIGH COMMISSIONER, SOUTH AFRICA.

(No. 88.)
(Confidential.)

Downing Street, 26th February, 1932.

SIR,

WITH reference to your despatches No. 185 of the 2nd April,† and No. 287 of the 22nd May,‡ I have the honour to transmit to you the accompanying copy of further correspondence with the Union Government§ on the subject of the Southern boundary of the Caprivi Strip.

2. With regard to the possibility, referred to in paragraph 5 of my Confidential despatch No. 491 of the 18th November, 1930,‖ that objection may be taken in the Permanent Mandates Commission to the boundary now accepted by His Majesty's Governments in the United Kingdom and in the Union of South Africa, on the ground that it constitutes a modification of the Anglo-German Agreement of 1890, His Majesty's Government in the United Kingdom are now disposed to the view that it would be best to deal with any such objection if any when it is raised.

3. With regard to the question of the boundary between Northern Rhodesia and South West Africa in the Zambesi River, the Secretary of State for the Colonies

* No. 109 in Dominions (South African) No. 4.
† 10707/15: not printed.
‡ 10707/16: not printed.
§ No. 109 in Dominions (South African) No. 4 and No. 21.
‖ No. 108 in Dominions (South African) No. 4.

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concurs in your negotiating with the Union Government on behalf of the Government of Northern Rhodesia in the matter, and in your making the best arrangements possible, provided that they are acceptable to the Government of Northern Rhodesia. I should be glad if you would proceed accordingly.

I have, &c.,
J. H. THOMAS.

IV. BECHUANALAND PROTECTORATE.

(a) Mining Proclamation and Concessions.

10141/116.

No. 23.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 12th January, 1932.)

[*Answered by No. 27.*]

(Bechuanaland Protectorate.)
(No. 653.)

High Commissioner's Office,
Cape Town, 24th December, 1931.

SIR,

I HAVE the honour to transmit herewith, for your information, a copy of a despatch* from the Resident Commissioner of the Bechuanaland Protectorate reporting upon the discussion of the provisions of the Draft Mining Proclamation at a meeting of the Native Advisory Council which was recently held for that purpose.

2. I also enclose a copy of my reply* to his despatch indicating the amendments to the Draft Proclamation which, subject to your concurrence, I would propose to make in order to meet the views of the Council. These amendments are as follows:—

Clauses 44, 45 *and* 53. The insertion in the proviso to each of these clauses after the words "conditions and restrictions as" of the words "after the owner has been consulted."

Clause 46. The insertion after the words "The High Commissioner shall" of the words "after the owner has been consulted."

3. You will observe that I am consulting my Legal Adviser upon the point raised by the Council (see paragraph 16 of the Resident Commissioner's despatch) with reference to the provisions of Clause 71, and as to the advisability of introducing into Clause 2 a definition of the term "native reserve" in order to provide that the Barolong farms, which are excluded from "private land" shall fall within the category of native reserves for the purposes of the Proclamation (see paragraphs 17 and 18 of the Resident Commissioner's despatch).

4. In my despatch No. 607 of the 27th November† I sought your approval of amendments in Clauses 6 (3) and 28 (1) in order to meet certain points raised by Mr. D. M. Buchanan on behalf of Chief Tshekedi, and I reported that, in the event of the proposed amendment of Clause 6 (3) being adopted, it was also proposed, subject to your concurrence, to amend Clause 35 (4). This latter Sub-Clause as proposed to be amended would read as follows:—

"(4) Crown Grants may be made in respect of native reserves with the written consent of the owner, provided that in the case of any area included in a native reserve but not subject to a mineral concession the withholding of such consent by the owner shall not be subject to the approval of the High Commissioner. The obligation to pay royalties under Section *twenty-eight* (1), which shall be used for the benefit of the tribe occupying the reserve, shall apply to the holders of claims on such grants."

5. I have given further consideration to the suggestion, referred to in paragraph 6 of my above-mentioned despatch of the 27th November, that in the event of diamond mining on any area in a native reserve not the subject of a concession some portion of the royalty payable under Clause 43 of the Draft Proclamation should be used for the benefit of the tribe occupying the reserve. I now recommend for your

* Not printed.
† No. 101 in Dominions (South African) No. 4.

approval that one half of any such royalty should be reserved for the benefit of the tribe, and that the following proviso should be added at the end of Clause 43 (1):—

"Provided that in the case of any diamonds won from any area included in a native reserve not subject to a mineral concession which has been thrown open for prospecting under the provisions of Sub-Section (3) of Section *six* or in respect of which a Crown Grant has been made under the provisions of Sub-Section (4) of Section *thirty-five* one half of the proceeds of such royalty shall be used for the benefit of the tribe occupying such reserve."

This arrangement would of course apply only in the case of the royalty payable under Clause 43, and not in respect of the one half share of the annual realized profit from the working of any diamond pipe to which the Government would be entitled in terms of Clause 41 (2).

6. One other point has arisen which appears to require consideration. As you are aware, "oil and oil shale" have been excluded from the definition of "mineral" in Clause 2, as it was contemplated that special legislation dealing with oil might have to be issued in the event of its discovery. It appears, however, that, inasmuch as the mineral rights which are held in private land by virtue of ownership of the land and in native reserves by virtue of existing concessions include rights to oil, and as the agreement now under negotiation between Tshekedi and the British South Africa Company specifically mentions oil as included, some means of regulating the prospecting and winning of oil is needed forthwith, pending the consideration and issue of special legislation if oil should be discovered. I accordingly propose that the following additional sub-clause, the terms of which have been settled in consultation with my Legal Adviser, should be inserted at the end of Clause 2 (2) of the Draft, viz.:—

"(3) Save as may be otherwise provided in any law hereafter enacted the provisions of this Proclamation shall apply, as if oil and oil shale were minerals within the meaning of this Proclamation, to the exercise of any right to prospect for or win oil or oil shale on private land where such right may be or have been possessed by the owner of such land or in any native reserve where such right may be or have been granted under any mineral concession now or hereafter in force."

7. I attach hereto a print of the Draft Proclamation* on which the various amendments mentioned in my despatch No. 607 of the 27th November, and in this despatch have been marginally noted.

8. The Draft Proclamation, which was published for public information in my Official Gazette of the 16th October, has been accepted by both the European and Native Advisory Councils of the Protectorate. I see no reason to anticipate that any objection will be raised by the British South Africa Company. The contention, to which they appeared to attach importance, that their liability, under the proposed agreement with Tshekedi, to pay 5 per cent. of all profits from mining operations under the concession should by a specific provision in the Proclamation be made transferable from the concessionaire to the claim-holder (see paragraph 3 of my despatch No. 496 of the 23rd September†) has ceased to require consideration. Tshekedi was anxious, and the Company have now agreed, that a royalty of 1 per cent. on output calculated in terms of Clause 2 of the Third Schedule to the Proclamation should be substituted for the percentage charge on profits. This seems to me in many respects a preferable arrangement, as it will ensure that some payment will accrue to the natives so long as any mineral production takes place, irrespective of whether or not a profit is earned. The Chief would not in any event have been prepared to enter into an agreement with the Company if any such liability assumed thereunder by the Company had been made transferable to another party. In the case of the proposed royalty payment no question of the transfer of the liability arises. I might mention that in a recent conversation with me Sir Drummond Chaplin suggested that Captain Clifford some time ago had held out a prospect that, if the Company came to terms with the Chief, the application of the Proclamation to the Company's Concession area, which would entail the immediate payment of rental by the Company to the Crown, should be deferred until prospecting operations were started. I replied that Captain Clifford must have been misunderstood, as he had told me categorically that the only deferment which he had contemplated was a term of grace not exceeding six months to allow for the preparation of prospecting operations (see paragraph 4 of my above-mentioned despatch of the 23rd September), and not a period of which the duration

* Not printed here. † No. 92 in Dominions (South African) No. 4.

would be left solely to the Company's own discretion. Sir Drummond did not press me further, but I do not know what he may have reported to his Board and what their attitude may be. The protest of the Tati Company Limited, transmitted in my despatch No. 632 of the 7th December,* is receiving consideration in consultation with my Legal Adviser, and I expect to be in a position to telegraph to you my views thereon by the time this despatch reaches London. In these circumstances, and subject to your decision regarding the Tati Company's protest, and to the settlement of the points mentioned in paragraph 3 above (about which I will report further by telegraph), I hope that you will be able to authorize me by telegraph to issue the Proclamation. I am anxious if possible to promulgate it next month.

I have, &c.,
H. J. STANLEY,
High Commissioner.

10141/120.

No. 24.

TATI COMPANY LIMITED to DOMINIONS OFFICE.

[Answered by No. 33.]

Portland House, 73, Basinghall Street,
London, E.C.2, 10th February, 1932.

SIR,

I HAVE the honour to acknowledge receipt of your letter of 23rd December.† In reply, I have been instructed by my Directors to send you the enclosed memorandum, also copy of letter dated 25th November‡ last addressed by the Company's Solicitors in Bulawayo to the Resident Commissioner for the Bechuanaland Protectorate, specifying the Company's main objections to the issue of the proposed Mining Proclamation for Bechuanaland Protectorate unless the Tati district be specifically excluded from the provisions thereof.

I am, &c.,
F. P. PATTERSON,
Secretary.

Enclosure 1 in No. 24.

MEMORANDUM OF THE TATI COMPANY'S OBJECTIONS TO THE PROPOSED MINING PROCLAMATION FOR BECHUANALAND PROTECTORATE, 1931.

GENERAL.

THE Tati Company was confirmed in its rights to the private ownership of its land and mineral rights by the Proclamation No. 2 of 1911, and it was thereby placed in an essentially different position from the ordinary mining concessionaire whose interest have merely been approved by the Secretary of State.

Although the Company would not desire to raise objections to laws in common with the rest of the Protectorate for the safety of life and limb and the preservation or order, it most strongly protests against confiscatory legislation which would abrogate the lawful rights of its said private ownership especially when no provision is made for compensation. It is because it appears to the Company that the proposed Proclamation might, if applied to the Tati district, amount to virtual confiscation without compensation, that the Company has been moved to make the strongest possible protest to His Majesty's Secretary for the Dominions.

The following examination of certain sections of the proposed Proclamation shows the manner in which the Proclamation might be so applied as to interfere with the proprietary rights of the Company and put obstacles in the way of the development of its private property.

Section 4.—Registration of Mineral Concession. The Proclamation No. 2 of 1911 is a public declaration of the admitted rights of the Tati Company. If the registration provisions of this Section are intended to apply to the Tati Company they would appear to be superfluous and would only involve unnecessary expense.

* No. 102 in Dominions (South African) No. 4. † 10141/112: not printed. ‡ Not printed.

Section 5.—Cessions and Transfers to be registered. The Company already keeps a register of Mineral Cessions or Transfers thereof in its own territory and registration with the Registrar of Deeds would appear to be unnecessary duplication involving additional expense.

Section 6.—Power to High Commissioner by notice in "Gazette" from time to time to specify areas within Protectorate to which the Proclamation shall apply. The Proclamation No. 2 of 1911 confirms the Tati Concessions Limited, its successors and assigns in the full free and undisturbed possession as owners of all the land within the Tati district and in "the right to all minerals and precious stones under the land in the Tati district," "also the right of prospecting for and working the same," and states that "nothing shall interfere with the rights of the Company as owners to grant or refuse to grant permission to prospect or mine upon their lands or to impose such conditions upon the grant of any such rights as they may deem fit."

It will be realized that the provisions of the proposed Proclamation could not be applied to the Tati Company's territory without abrogating and confiscating the proprietary and other rights conferred upon the Company by Proclamation No. 2 of 1911. The Company at present enjoys an absolute proprietary right to the minerals in the Tati district and owns the power to win and dispose of these minerals in the methods which seem best to it.

Nevertheless the Memorandum in explanation of certain provisions of the draft Proclamation, which is published with the draft Proclamation, in fact makes specific reference to the mineral rights of the Tati Company; and Section 6 of the Memorandum states "that as soon as the Proclamation has been applied (for example) to the Tati district, prospecting and mining can only be carried out in accordance with the provisions of the Mining Proclamation, and the owners of the mineral rights will be required to take out a prospecting permit in accordance with Section 37 of the Proclamation." Such permit would only authorize *the holder or his authorized servant* to prospect and mine, which is a drastic limitation of the Company's rights as defined by Proclamation No. 2 of 1911, and would probably preclude the Company from developing its mineral resources. The proprietary rights of the Company would be affected by the fact that it would be unable to enter into contracts with third parties for the development of its minerals. Under the Proclamation the Company would also be prejudiced in carrying out existing contracts.

The Company maintains that it must be made clear that these Sections of the proposed Proclamation shall not apply to the territory of the Tati Company.

Part II.

Prospecting and Mining on Crown Land and Native Reserves not held under Concession for all Minerals except Diamonds.

It is presumed that this heading is intended to exclude all the Sections of this Part, viz., Sections 7 to 28, from application to the lands of the Tati Company, which are neither Crown Lands nor Native Reserves, but private lands governed presumably by the provisions of Part V of the proposed Proclamation.

The Company must, however, point out that this intention *is* obscured by the wording of Part II.

Section 7 for instance (1) "No person shall prospect on *any* area *to which this Proclamation or any of its provisions have been applied except on claims of which he is the holder* unless he is the holder of a prospecting permit." Paragraph 10 of the Memorandum of Explanation states "In the first instance the Proclamation would probably *be applied* to areas, *such as the Tati district*, where mining is actually being carried on."

Section 7 therefore would seem to apply to *any* area, including private land, to which the Proclamation had been applied, notwithstanding that Section 7 is in Part II of the Proclamation, which does not deal with private lands.

The Company submits that it should be made quite clear that none of the Sections 7 to 28 are applicable to the territory of the Tati Company.

Part III.

Prospecting and Mining on Land held under Mineral Concession.

Section 2 (*m*) of the draft Proclamation defines Mineral Concession as "a concession made by or on behalf of a ruling Chief of the Bechuanaland Protectorate which has been approved by the Secretary of State, granting a right to minerals or mineral products on any land." As the Tati Company's mineral and other rights

were conferred by a ruling Chief of Matabeleland before the formation of the Bechuanaland Protectorate, and as the Tati Company was confirmed in its right and title to its property by Proclamation No. 2 of 1911, it must be made clear that the Tati Company's property does not come under this definition, and that the whole of Part III shall not apply to its territory. The Tati Company, being the absolute owner of the minerals in the Tati district, could not consent to be treated as the mere holders of a Mineral Concession, unless at all events it was properly compensated.

Part V.

Prospecting and Mining on Private Lands.

Section 37. The Tati Company which is the private holder of all its lands as described in the Schedule to Proclamation No. 2 of 1911 objects to the provision in Section 37 which would apparently make it necessary for it to obtain a prospecting permit from the Mining Commissioner, and as pointed out above in the objection to Section 6 the limitation of such permit to the holder or his authorized servant would be an unjustifiable interference with the Company's rights. Further, it is not clear what exactly would be involved by the application of the Proclamation to private lands of the Company. As pointed out above it might mean that the whole Proclamation, including Sections 7, 9, and 11, Part II which deals with mining on Crown Lands and Native Reserves, would apply to private lands when once the Proclamation in general had been applied.

The Company maintains that in the case of the private land held by the Tati Company the regulations in the rest of the draft Proclamation are in conflict with the Company's rights as defined in Proclamation No. 2 of 1911.

Part VI.

Prospecting and Mining for Diamonds.

Section 39 (1).—*Power is given to the High Commissioner to prohibit mining for diamonds.* Although the Memorandum of Explanation states that it is not contemplated that this power would be exercised in normal circumstances, the Tati Company must object to the existence within its territory of such a power the exercise of which would be a gross violation of its mining rights including precious stones in its territory.

Section 39 (2).—*Prospecting for or winning daimonds on any Crown land or Native Reserve is prohibited unless the prospector holds a Crown Grant under Section* 35 *of the proposed Proclamation.* By Proclamation No. 2 of 1911 the Tati Company was confirmed in its ownership of the mining rights, including precious stones, in the land set apart for a Native Reserve in Tati. Section 35 (2) of the proposed Proclamation specifically states that a Crown Grant cannot be made in respect of land the title to which was vested out of the Crown by Proclamation No. 2 of 1911. The Company would therefore be entirely prohibited from winning diamonds in the land set apart for a Native Reserve in Tati if this Section of the proposed Proclamation were applied.

Section 41 (2) *and* (3).—Under Section 41 (2) the Government proposes to take 50 per cent. of the annual realized profit from working any diamond pipe, licence fees of 5s. per month for each 900 square feet of pipe area (Section 41 (3)) and a royalty of 10 per cent. of the value of the diamonds, this royalty being payable also in respect of alluvial diamonds (Section 43 (1)).

The reasons justifying these provisions in the Memorandum of Explanation, paragraph 3), show clearly that in certain circumstances legislation granting to the State a large share in the profits from the working of a diamond pipe might be equitable. But in the case of the Tati Company where the right to *all minerals and precious stones* has already been reserved to the Company by Proclamation No. 2 of 1911 such legislation would appear to be an attempt to confiscate these rights.

Part VII.

Surface Rights.

The Tati Company would again point out that it is the freeholder of the surface as well as the mining rights in the lands its right and title to which were confirmed by Proclamation No. 2 of 1911.

Therefore the reasons which might make such provisions valuable in the case of areas where there are separate holders of mining and surface rights do not apply to the territory of the Tati Company.

Section 52.—The erection upon any claims of any building for the purpose of trading is prohibited except when authorized by the Resident Commissioner. The Tati Company as absolute owner of the trading rights within its territory has always reserved these rights for itself (except as regards the township of Francistown) and has thus derived revenue of which the proposed Proclamation would deprive it, unless the consent of the Resident Commissioner were previously obtained. The Company fails to see any objection to the erection of buildings on suitable sites on mining claims on its own territory, and it must object to these proposed restrictions.

Section 53.—The control of the flow, diversion, and use of all water which may be flowing, or may exist, on any land in any mining district is vested in the Resident Commissioner. Although the Company recognizes the validity of the reasons expressed in paragraph 36 of the Memorandum of Explanation which justify the provisions of this Section of the Proclamation outside the Tati territory, as pointed out above these reasons do not apply to the Tati Company as the holder of the surface including water rights as well as the mineral rights in its territory. Therefore the Company submits that this interference with its proprietary rights is unnecessary and unjustifiable.

Section 58.—Power is given to the Mining Commissioner to prohibit the working of alluvial mineral deposits, if he deems that irremediable damage to the soil would result. It is submitted that this is also an unjustifiable encroachment upon the Tati Company's rights.

THIRD SCHEDULE.

Scale of Royalties. The Tati Company has its own scale of royalties as set out in its Mining Rules and Regulations, and must object to this interference with its freedom to arrange its own terms.

CONCLUSION.

In view of the above objections, the Tati Company would respectfully suggest that either (1) the Proclamation should not apply to the Tati district, or (2) some provision should be made for adequately compensating the Company, which is the lawful holder of property the title to which has been confirmed by a previous Proclamation of His Majesty's' High Commissioner for South Africa.

TATI COMPANY LIMITED,
T. P. PATTERSON,
Secretary.

20285/23.

No. 25.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 12.20 p.m., 13th February, 1932.)

[Answered by No. 26.]

No. 14. 13TH FEBRUARY. My despatch of the 2nd December, No. 614.* Further difficulty arose with Tshekedi when it was discovered that approximately 130 square miles of the south-eastern part of area projecting into Crown Land and bounded on the north by the Nkate Tubukai Road formed part of Lake and was therefore useless. In exchange of this useless portion Chief asks for triangle between the Nata and Naitengwe Rivers, viz., Item 1 in original offer A. I see no serious objection to letting him have this area, but I have told him that I would not seek your approval until I had explicit assurance that if your sanction were obtained the offer as amended would definitely be accepted by him and the Tribe and that no further difficulties would be raised. He has now given me such assurance and I shall be glad if you will telegraph approval so that the Chief's negotiations with the British South Africa Company may not be further delayed.—STANLEY.

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* 20285/21: not printed.

23

20285/23

No. 26.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 2.15 p.m., 16th February, 1932.)

No. 12. YOUR telegram of 13th February, No. 14.* I approve.—THOMAS

10141/119.

No. 27.

DESPATCH

to

HIGH COMMISSIONER, SOUTH AFRICA.

[Answered by Nos. 28 and 40.]

(Bechuanaland Protectorate.)
(No. 79.)

SIR, Downing Street, 22nd February, 1932

I HAVE the honour to acknowledge the receipt of your despatches No. 603 of 26th November,† No. 605 of 26th November,‡ No. 607 of 27th November,§ and No. 653 of the 24th December,‖ regarding the Draft Mining Proclamation of the Bechuanaland Protectorate, and to transmit to you a copy of a letter from the Imperial Institute to whom these despatches were referred, by my direction, for technical advice.

2. The last three despatches referred to relate to proposed amendments in the Draft Proclamation to deal with a number of points. I agree to the adoption of the various amendments which you propose in them subject to consideration by you of the variations suggested by the Local Committee of the Imperial Institute in the enclosed letter.

3. Your despatch No. 603 of the 26th November relates to an application by De Beers Consolidated Limited for a Crown Grant, under Section 35 of the Proclamation, of the exclusive right to prospect and mine for diamonds over the area not already held under concession by the British South Africa Company. You will see that the Legal Committee of the Imperial Institute, in the enclosed letter, concurs in your view that there would be advantages in an agreement on this matter with the De Beers Consolidated Limited if satisfactory terms can be arranged. Accordingly, I approve of your proceeding with negotiations with the Company on the lines proposed in the enclosure to your despatch No. 603 of the 26th November, subject to the amendments, &c., indicated in the enclosed letter from the Imperial Institute. The draft Grant should, however, be referred to me with a view to its examination by the Legal Committee of the Imperial Institute, and for final determination of the principle involved.

4. Before, however, negotiations are entered into with De Beers Consolidated Limited, it would seem necessary to verify that the British South Africa Company, having regard to their preferential rights in the Protectorate, acquiesce in the proposed Crown Grants to De Beers. I gather from the enclosure to your despatch No. 603 of 26th November that the British South Africa Company have ceded to De Beers the rights to diamonds in the area in the Protectorate held under concession by the British South Africa Company, but I have no information to show that the preferential rights of the British South Africa Company in respect of the remainder of the Protectorate in regard to diamonds have been impaired in any respect. I shall be glad if you will give this point your consideration.

I have, &c.,
J. H. THOMAS.

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* No. 25. † No. 99 in Dominions (South African) No. 4.
‡ No. 100 in Dominions (South African) No. 4. § No. 101 in Dominions (South African) No. 4.
‖ No. 27.

Enclosure in No. 27.

M. 4048.

Sir, Imperial Institute, London, S.W.7, 26th January, 1932.

With reference to your letter 10141/103 of 2nd January, and its enclosed despatches relating to the Draft Mining Proclamation of the Bechuanaland Protectorate, and to the High Commissioner's despatch of 24th December, 1931, with its enclosures, I have now taken the advice of my Legal Committee upon the technical aspect of the matters referred to in these despatches and am in a position to communicate that advice to you.

(A) *Despatch No. 603 of 26th November.*—In view of the considerations stated by the High Commissioner, the Legal Committee concurs in his proposal to make a Crown Grant to De Beers Consolidated Limited under Section 35 of the Proclamation of the exclusive right to prospect and mine for diamonds. But they are of opinion:—

(a) That, as a matter both of interpretation and of policy, the rent of 1s. per square mile referred to in Section 31 of the Proclamation is and should be an indivisible sum and should be paid by every holder of a mineral concession, whatever be the number or class of the minerals for which he may be authorized to prospect.

(b) That in order to ensure *bona fide* prospecting and development an expenditure of £3,000 per annum is not enough, and that the grant should stipulate for £5,000 per annum.

(c) That the High Commissioner in replying to the application of De Beers Consolidated Limited should intimate that the draft Crown Grant must contain a clause providing that copies of all maps, plans of workings, geological surveys, and prospecting records used or made in the course of prospecting should be supplied to the High Commissioner annually, and also a clause to the effect that if at the end of ten years, De Beers Consolidated Limited should wish to obtain a renewal of their Grant, the amount of the quota to be attributed to the Bechuanaland Protectorate out of the total value of diamonds purchased or mined by that company in Africa must be considered ***de novo***.

If the Secretary of State should so desire, the Legal Committee would be glad to consider the draft Grant in due course.

(B) *Despatch No. 605 of 26th November.*—The Legal Committee concur in the view adopted by the High Commissioner and his Legal Adviser of the suggested amendment of Section 33 (1) of the Draft Proclamation.

(C) *Despatch No. 607 of 27th November.*—The Legal Committee concur in the amendments of which the High Commissioner in this despatch seeks the approval of the Secretary of State to make in the Draft Proclamation. The Committee, however, suggest with reference to Sub-clause 3 of Clause 6 that in the proviso proposed to be added, the word "already" should be inserted after the word "not" so that it will read "but not already subject to a mineral concession."

(D) *Despatch No. 653 of 24th December* (a copy of which Mr. Machtig handed to the Legal Committee). Referring to the numbers of the paragraphs of this despatch:—

2 The Committee concur.

3 Noted.

4 and 5. The Committee concur, subject to the suggestion made in paragraph C of my letter above that the word "already" should be inserted in the proviso before the words "subject to a mineral concession."

6. As the High Commissioner observes, if oil is discovered, special legislation dealing with it will be required. My Committee, therefore, suggests that it might be desirable to stress the temporary nature of the inclusion of oil and oil shale in this Proclamation. Perhaps that might be done if the new Sub-clause 3 of Clause 2 were to read as follows:—

"(3) *Unless and until it* may be otherwise provided in any law hereafter enacted the provisions of this Proclamation shall *for the time being* apply, as if oil and oil shale were minerals within the meaning of this Proclamation, to the exercise of any right to prospect for or win oil or oil shale on private land where such right may be or have been possessed by the owner of such land or in any native reserve where such right may be or have been granted under any mineral concession now or hereafter in force. Provided that no right acquired with regard to oil or oil shale so long as they are included in the term "minerals" within the meaning of this Proclamation shall prejudice the provisions of any law that may hereafter be enacted with regard to them."

It is true that as a matter of strict law the suggested amendments are unnecessary because a subsequent Proclamation can legally override acquired rights, but it may seem desirable to the High Commissioner and his Legal Adviser to insert a warning of this character which might render easier the passing of special oil legislation later on. An alternative method would be for the Mining Commissioner to give a written warning to applicants for prospecting permits, &c., when issuing them.

8. This does not appear to concern my Committee.

I am, &c.,
W. K. Furse,
Director.
(Lieutenant-General Sir Wm. Furse.)

Under-Secretary of State,
Dominions Office,
London, S.W.1.

10141/131

No. 28.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 2nd May, 1932.)

(Bechuanaland Protectorate.)
(No. 236.)

Sir, High Commissioner's Office, Cape Town, 15th April, 1932.

With reference to the last paragraph of your despatch No. 79 of the 22nd February* and in confirmation of my telegram No. 39 of the 13th April,† I have the honour to enclose herewith a copy of a letter which was addressed to Sir Drummond Chaplin regarding the desire of De Beers Consolidated Mines Limited to obtain a Crown Grant, under Clause 35 of the proposed Bechuanaland Protectorate Mining Proclamation, in respect of diamond prospecting and mining, together with a copy of his reply stating that the British South Africa Company, having regard to its preferential rights in the Protectorate, would be prepared to acquiesce in the De Beers Company being given a Crown Grant in respect of diamond mining and prospecting, in the event of it being decided to make such grant.

C. South M

already held under concession by the British South Africa Company.

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure 1 in No. 28.

(Confidential.)
(No. 565.)

Sir, High Commissioner's Office, Cape Town, 6th April, 1932.

I am directed by the High Commissioner to inform you that De Beers Consolidated Mines, Limited, has inquired whether it would be possible, after the promulgation of the Bechuanaland Protectorate Mining Proclamation, for that Company to acquire, under the provisions of Clause 35 of the Proclamation, a Crown Grant in respect of diamond prospecting and mining over the area of the Protectorate not

The De Beers Company has intimated that the British South Africa Company has ceded to it the rights to diamonds in the area in the Protectorate held under

* No. 27. † 10141/127: not printed.

concession by the British South Africa Company, but the High Commissioner has no information to show that the preferential rights of the British South Africa Company in respect of the remainder of the Protectorate in regard to diamonds have been impaired in any respect. In these circumstances His Excellency would be glad if he could be advised whether the British South Africa Company, having regard to its preferential rights in the Protectorate, would be prepared to acquiesce in the De Beers Company being given a Crown Grant in respect of diamond prospecting and mining in the Protectorate, in the event of it being decided to make such grant.

I am, &c.,
SHIRLEY EALES,
Acting Imperial Secretary.

Sir Drummond Chaplin, G.B.E., K.C.M.G.

Enclosure 2 in No. 28.

The Rhodesia Chartered Agency Limited, Cape Town,
6th April, 1932.

DEAR SIR,

I BEG to acknowledge receipt of your Confidential letter, No. 565, of the 6th instant.

The British South Africa Company, having regard to its preferential rights in the Protectorate, would be prepared to acquiesce in the De Beers Company being given a Crown Grant in respect of diamond prospecting and mining in the Protectorate, in the event of it being decided to make such grant.

Yours, &c.,
DRUMMOND CHAPLIN.

The Acting Imperial Secretary,
High Commissioner's Office,
Parliament Street,
Cape Town.

20285/31.

No. 29.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 2nd May, 1932.)

[*Answered by No.* 38.]

(Bechuanaland Protectorate.)
(No. 237.)

SIR,

High Commissioner's Office, Cape Town, 15th April, 1932.

I HAVE the honour to transmit herewith a copy of the new Mining Agreement* between the Bamangwato tribe and the British South Africa Company which, as reported in my telegram No. 27 of the 23rd March,† was signed by the Acting Chief Tshekedi at Serowe on the 21st March, and has now been signed by Sir Drummond Chaplin on behalf of the Company. The Agreement has been signed in triplicate. One copy has been retained by the Chief, one copy is in the possession of the Company and the third copy is filed in my Office. I understand from Sir Drummond that the Company's copy is being transmitted to the Board of Directors by this week's mail in order that it may be submitted to you for your sanction and approval in accordance with the requirements of Section 45 of the Bechuanaland Protectorate Proclamation of the 10th June, 1891.

2. It will be observed that in the Agreement as signed the tribal land in which mining rights are granted to the Company is described as the "Bamangwato country." In the draft of the Agreement as prepared by the Chief's legal adviser (Mr. D. M. Buchanan, K.C.), the words "Bamangwato Reserve" were used, the alteration of the word "reserve" to "country" having been made—apparently as a matter of sentimental preference—by the Chief at the time of signature. I have explained to

* Not printed here. † 20285/28: not printed.

Tshekedi—who has come to Cape Town to discuss with me the terms of the Trust Deed which he proposes to execute for the purpose of establishing the Tribal Fund referred to in the Agreement—that the use of the word "country" instead of "reserve" might lead to some misunderstanding in the future as to the precise area of land in which mining rights have been granted to the Company, and I have told him that I should ask you, in the event of your deciding to approve of the Agreement, to endorse upon it a stipulation to the effect that in the interpretation of the Agreement the expression "Bamangwato country" shall mean the Bamangwato Reserve as at present constituted, i.e., as constituted at the date of the signing of the Agreement. Tshekedi did not raise any objection to this and said that he understood the reason for it.

3. Before signing the Agreement, Sir Drummond Chaplin drew attention to the above-mentioned alteration, and the enclosed copy of a letter* which I have caused to be addressed to him sets forth the understanding agreed upon with him in regard to it.

4. Subject to the foregoing observations, I recommend that, upon application by the Company, your sanction and approval of the Agreement should be signified, and I should be obliged if I could be informed by telegraph if and when the Agreement has been so approved, in order that, upon the promulgation of the Mining Proclamation, arrangements may be made with the Company for the transfer to the Government of the land at Gaberones which the Company has undertaken to surrender to the Crown.

5. I may add that I have come to a mutually acceptable understanding with the Acting Chief in regard to the provisions of the Trust Deed under which the Tribal Fund is to be established and administered. These provisions are now being put into proper legal form, and I will forward a copy of the Deed to you as soon as it has received Tshekedi's signature and my approval.

I have, &c.,
H. J. STANLEY,
High Commissioner.

20285/32.

No. 30.

BRITISH SOUTH AFRICA COMPANY to DOMINIONS OFFICE.

[*Answered by No.* 31.]

The British South Africa Company, Rhodesia House,
2, London Wall Buildings, London, E.C.2, 4th May, 1932.

SIR,

I AM instructed to refer to previous correspondence regarding the mining concession over the Bamangwato Reserve held by the British South Africa Company and to forward an original agreement, dated 21st March, 1932,† between Tshekedi Khama, Acting Paramount Chief of the Bamangwato Nation, and the British South Africa Company for the approval of His Majesty's Secretary of State for the Dominions.

My Directors are advised that the High Commissioner for South Africa has communicated with you on this matter, and I shall be glad therefore if the Agreement, with the approval of the Secretary of State endorsed thereon, may be returned at an early date.

I am, &c.,
PERCY J. BAIRD,
Secretary.

20285/32.

No. 31.

DOMINIONS OFFICE to BRITISH SOUTH AFRICA COMPANY.

SIR,

Downing Street, 13th June, 1932.

I AM directed by Mr. Secretary Thomas to acknowledge the receipt of your letter of the 4th May‡ forwarding for the approval of the Secretary of State, in accordance with the requirements of Section 45 of the Bechuanaland Protectorate Proclamation of the 10th June, 1891, an original Agreement, dated the 21st March,

* 20285/31: not printed. † Not printed. ‡ No. 30.

1932, between Tshekedi Khama, Acting Chief of the Bamangwato tribe in the Bechuanaland Protectorate and the British South Africa Company.

2. The Secretary of State approves this Agreement on condition that the words "Bamangwato country" and "country" where they occur in the Agreement are to be understood as meaning the Bamangwato Reserve as constituted at the date on which the Agreement was signed. He has written his approval on the Agreement accordingly, and it is returned herewith

I am, &c.,
E. G. MACHTIG.

10141/136.

No. 32.

DOMINIONS OFFICE to BRITISH SOUTH AFRICA COMPANY.

[*Answered by No. 34.*]

SIR, Downing Street, 18th June, 1932.

I AM directed by Mr. Secretary Thomas to refer to your letter of the 17th August* last furnishing the views of your Directors on the draft Mining Proclamation for the Bechuanaland Protectorate, and to state that the High Commissioner for South Africa has had these under consideration in connexion with certain revisions in the draft of the Proclamation which have been made since the date of your letter.

2. I am now to enclose a revised copy of the draft Proclamation† in the form in which it is proposed to issue it.

3. It will be seen that Section 33 (1) of the draft Proclamation in its present form embodies the amendments suggested in the third and fourth paragraphs of your letter. As regards the fifth and sixth paragraphs, I am to refer to the letter from this office of the 13th June‡ signifying the Secretary of State's approval of the Agreement recently concluded between your Company and the Acting Chief of the Bamangwato Tribe. With regard to your request made to the High Commissioner through Sir Drummond Chaplin, that the Proclamation, if promulgated, shall not be applied to the mineral concession areas held by your Company until such time as, the above Agreement having been effected, the Company shall have been able to complete the necessary arrangements for prospecting, I am to state that the High Commissioner for South Africa has already been authorized to inform Sir Drummond Chaplin that a term of grace not exceeding six months will be granted for this purpose. As regards the question raised in the seventh and eighth paragraphs of your letter of 17th August, the agreement between your Company and the Acting Chief of the Bamangwato tribe provides, instead of the payment of 5 per cent. of the net profits of all mining operations in the Reserve to the Bamangwato Trust Fund, for the payment of a royalty of 1 per cent. on output to the Fund. The Secretary of State understands that in the case of the royalty payment no question of the transfer of the liability arises.

4. The draft Proclamation, in its present form, embodies a certain number of additional amendments, including a provision in Section 1 (2) for the exclusion of the Tati District from the Proclamation. As regards this matter, I am to explain that representations have lately been received from the Tati Company as regards the application of the Proclamation to the Tati District, and that, having regard to the special position of the Tati Company as defined in Bechuanaland Protectorate Proclamation No. 2 of 1911, it has been decided, in order to avoid holding up the issue of the Proclamation, to exclude the Tati District from the Proclamation in the first instance, without prejudice to the question of its being applied to the District later in whole or in part after the Tati Company's representations have been fully considered.

5. The Secretary of State will be glad to learn whether your Directors have any further comments to make on the draft Proclamation before authority is given to the High Commissioner to issue it. As the High Commissioner is anxious to issue the Proclamation at an early date an early reply would be greatly appreciated.

I am, &c.,
E. G. MACHTIG.

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* No. 79 in Dominions (South African) No. 4. † Not printed here. ‡ No. 31.

10141/136.

No. 33.

DOMINIONS OFFICE to TATI COMPANY, LIMITED.

[*Answered by No. 35.*]

SIR, Downing Street, 18th June, 1932.

I AM directed by Mr. Secretary Thomas to request you to inform your Board that the representations made in your letter of the 10th February* on the question of the application of the proposed Bechuanaland Protectorate Mining Proclamation to the Tati District have received his careful consideration in consultation with the High Commissioner for South Africa.

2. He has come to the conclusion that the position of the Tati Company in relation to the provisions of the proposed Proclamation will require further examination, and, in order to avoid further delay in the issue of the Proclamation while this examination proceeds, it has been decided in the first instance to exclude the District in terms from the present Proclamation. The following Sub-Section has accordingly been added to Section 1 of the draft Proclamation, which it is proposed to issue shortly:—

"(2) This Proclamation shall not apply to the land usually known as the Tati District as defined in Proclamation No. 2 of 1911 (including the Native Reserve within that District assigned by that Proclamation)."

3. Mr. Thomas wishes me to make it clear that this decision is without prejudice to the question of applying the Proclamation to the Tati District later in whole or in part after the representations made by you have been more fully examined. With a view to this further examination, I am to ask you to be so good as to furnish a copy of the existing Regulations, made by your Company and in force in the Tati District governing mining there.

I am, &c.,
E. G. MACHTIG.

10141/138.

No. 34.

THE BRITISH SOUTH AFRICA COMPANY to DOMINIONS OFFICE.

Rhodesia House,
SIR, 2, London Wall Buildings, London, E.C.2, 23rd June, 1932.

I AM to refer to your letter dated 18th June, 1932,† enclosing a revised copy of the draft Mining Proclamation for the Bechuanaland Protectorate, and to say that the Directors have examined all the alterations which have been made in the draft and have no further comment to make upon it.

2. The Directors note and appreciate the fact that the High Commissioner has been authorized to grant a term of grace not exceeding six months between the date of the promulgation of the Proclamation and the date when it is applied to the mineral concession areas held by the British South Africa Company. They desire me to say that they are at present doing their best to assure that satisfactory arrangements for prospecting will be made within the time so allowed.

I am, &c.,
C. N. S. MAUDE,
Assistant Secretary.

10141/139.

No. 35.

THE TATI COMPANY LIMITED to DOMINIONS OFFICE.

Portland House, 73, Basinghall Street,
SIR, London, E.C.2, 23rd June, 1932.

I HAVE the honour to acknowledge receipt of your letter of 18th June,‡ the contents of which have been communicated to my Directors.

As desired I have the pleasure to enclose a copy of the Company's Mining Rules and Regulations as now in force.

I am, &c.
M. P. PATERSON,
Secretary.

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* No. 24. † No. 32. ‡ No. 33.

20869/1.

No. 36.

BRITISH SOUTH AFRICA COMPANY to DOMINIONS OFFICE.

[*Answered by Nos. 42 and 50.*]

Rhodesia House, 2, London Wall Buildings,
London, E.C.2, 28th June, 1932.

SIR,

I AM instructed to refer to the Memorandum dated 2nd January, 1925,* submitted by my Board with regard to the position of the British South Africa Company in relation to the Bechuanaland Protectorate territories, and to the Note of Discussion at the Dominions Office on the 30th November, 1928, regarding the draft Bechuanaland Protectorate Mining Proclamation, a copy of which Note was furnished to my Directors under cover of Private Secretary Sidebotham's letter dated 5th December, 1928.†

2. The draft of the Bechuanaland Protectorate Mining Proclamation having now been settled, my Directors will be glad to be informed whether if the Linchwe Concession Company Limited should be able to obtain from the Acting Paramount Chief a new concession similar to that obtained from Chief Linchwe in 1923, which concession the Secretary of State at that time declined to confirm, the Secretary of State would now be willing to confirm such new concession provided the terms of the concession were such as can be approved by the Secretary of State.

3. I am to remind you that under the disallowed Concession of 1923, the Linchwe Company was granted the right to prospect the Bakgatla Reserve for a period of two years and the right, within that period, to select a new mining area of 100 square miles —the area demarcated in 1910 to be abandoned upon the selection of the new area.

I am, &c.,
C. N. S. MAUDE,
Assistant Secretary.

10141/139.

No. 37.

DESPATCH

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Bechuanaland Protectorate.)
(No. 258.)

SIR,

Downing Street, 28th June, 1932.

IN continuation of my despatch No. 249 of 18th June,‡ I have the honour to transmit to you copies of the replies received from the British South Africa Company§ and from the Tati Company‖ to the letters addressed to them on 18th June with regard to the Draft Mining Proclamation of the Bechuanaland Protectorate.

2. It will be seen that the British South Africa Company have no further comments to offer upon the draft proclamation in the form in which it was sent to them.

3. As regards the Tati Company, I presume that, after the Proclamation has been issued, you will consider further the question of applying it in whole or in part to the Tati District and will in due course inform me what action you recommend in this respect. On receipt of your recommendations, I propose further to consult the Legal Committee of the Imperial Institute, who, as you will recollect, have offered, in the letter from the Imperial Institute of 18th March,¶ to advise in the matter. As I assume that the Company's Mining Rules and Regulations forwarded by the Company in their letter of 23rd June are available to you in South Africa, I have retained for record here the copy forwarded by them.

4. Since the receipt of these letters, I have received your telegram No. 59 of 23rd June¶ suggesting for consideration a number of further amendments in the text

* No. 43 in Dominions (South African) No. 2. † No. 22 in Dominions (South African) No. 3.
‡ 10141/136: not printed. § No. 34. ‖ No. 35. ¶ No. 10141/123: not printed.

of the draft Mining Proclamation. I am in communication with the Imperial Institute regarding these proposals, and will communicate with you further on receipt of their reply.

I have, &c.,
J. H. THOMAS.

20285/35.

No. 38.

DESPATCH

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Bechuanaland Protectorate.)
(No. 259.)

SIR,

Downing Street, 30th June, 1932.

WITH reference to your despatch No. 237 of the 15th April,* I have the honour to confirm my telegram to you No. 48 of the 17th June† stating that I had sanctioned the Agreement, dated the 21st March, 1932, between Tshekedi Khama, Acting Chief of the Bamangwato Tribe in the Bechuanaland Protectorate and the British South Africa Company subject to the stipulation suggested in paragraph 2 of your despatch under reference.

2. A copy of the correspondence‡ with the British South Africa Company on this matter is enclosed for your information.

I have, &c.,
J. H. THOMAS.

20285/35.

No. 39.

SIR E. HARDING (DOMINIONS OFFICE)

to

SIR H. STANLEY (HIGH COMMISSIONER, SOUTH AFRICA).

MY DEAR STANLEY,

Downing Street, 30th June, 1932.

WITH reference to our despatch No. 259 of the 30th June,§ transmitting copies of the correspondence with the British South Africa Company about the approval of the new Bamangwato mining agreement, may I say how pleased we were to learn that you have been successful in bringing this long and complicated story to a satisfactory conclusion?

As regards the terms of the Agreement itself, I think you should know that our Legal Adviser, to whom it was referred before it was submitted to the Secretary of State for approval, was so struck by the defective drafting of parts of this document, and particularly of Article 2, that he raised the question whether these drafting defects ought not to be rectified before the Secretary of State's approval was given. As the Agreement had been formally signed, and any alteration in its wording at that stage would have been bound to lead to difficulties and delays which it was most desirable to avoid, and since Article 2, though obscure, was not wholly unintelligible, it was felt better to leave it as it stood; and it was accordingly approved in the form in which it reached us. We quite appreciate, of course, that your office are not responsible for the form of this document, but we thought it desirable that you should know the position.

Yours, &c.,
E. J. HARDING.

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* No. 29. † 20285/32: not printed. ‡ Nos. 30, 31 and 20285/35: not printed.
§ No. 38.

10141/143.

No. 40.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 25th July, 1932.)

(Bechuanaland Protectorate.)
(No. 377.)

SIR, High Commissioners' Office, Pretoria, 30th June, 1932.

WITH reference to the third paragraph of your despatch No. 79 of the 22nd February* and my despatch No. 236 of the 15th April,† I have the honour to transmit herewith, for your information, a copy of a letter which, by my direction, has been addressed to De Beers Consolidated Mines, Limited, regarding the desire of that Company to obtain a Crown Grant, under Clause 35 of the proposed Bechuanaland Protectorate Mining Proclamation, of the exclusive right to prospect and mine for diamonds over the area not already held under concession by the British South Africa Company.

2. You will see that the Company has been informed that, while I shall be prepared to receive and consider definite proposals if submitted in the form of a Draft Crown Grant, I am not in a position at this stage to say that such a Crown Grant will be made, and that it has been made clear that it will be necessary for me to refer the matter to you on the question of principle before any agreement can be concluded.

3. It has also been pointed out to the Company that it would be necessary to exclude from any Crown Grant not only such area or areas as may be affected by the concessionary rights held by the British South Africa Company, but also all Native Reserves, any private land in respect of which the mineral rights are not held by the Crown, *e.g.*, the Tati district, and any areas in which the mineral rights are held by virtue of concession or otherwise by any private person or company.

4. The suggestions made under head (A) of General Sir William Furse's letter of the 26th January,‡ of which a copy was enclosed in your despatch under reference, have been adopted and embodied in the letter to the Company, with the exception of the suggestion that the rent to be charged should be at the rate of one shilling per square mile. With regard to this point, I would observe that, while a Crown Grant, made under Clause 35 of the Proclamation, conferring an exclusive right to prospect and mine for all minerals within a particular area or areas, may perhaps be regarded as equivalent to a mineral concession, it seems to me doubtful whether, in a case such as that now under consideration, where it is proposed that a Crown Grant should be made in respect of diamonds only, it would be reasonable for the Administration to insist upon payment of rental at the same rate as would apply in the case of a concession such as that of the British South Africa Company in the Bamangwato Reserve which confers an exclusive right to all minerals, including diamonds. I appreciate that the British South Africa Company's concession provides for the payment of an annual rental to the Native Chief and tribe, apart from any obligations which will be imposed upon the holders of the concession in terms of the mining law, but on the other hand the concession does not, as contemplated in the case of the proposed Crown Gran to De Beers, require the holder to spend a stipulated sum annually on prospecting. In view of the provision in Clause 35 of the Proclamation that (subject to the payment of royalties and to provision being made in regard to the number of claims to be pegged) a "Crown Grant may contain such limitations, terms and conditions as the High Commissioner may deem necessary," I should hesitate to agree without reservation to a suggestion that it should be laid down as an invariable rule as a matter of policy that the rent to be paid by the holder of every Crown Grant should be fixed at 1s. per square mile "whatever be the number or class of the minerals for which he may be authorized to prospect." In the meanwhile, and pending further consideration when the draft of a Crown Grant has been submitted, the De Beers Company has been informed that the amount of rental to be paid per square mile will require further consideration.

5. You will observe that in the last paragraph of the enclosed letter an assurance has been given, as authorized in your telegram No. 32 of the 16th April,§ that, in the

* No. 27. † No. 28. ‡ Enclosure in No. 27. § 10141/126: not printed.

event of De Beers participating financially in the prospecting operations in the area covered by the British South Africa Company's agreement with Tshekedi, prospecting rights for diamonds, so far as diamonds rights controlled by the Crown outside the British South Africa Company's area are concerned, will not be granted until my present negotiations with De Beers have been either concluded or broken off. An assurance to this effect was given by me to Sir Drummond Chaplin on the 20th April last.

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure in No. 40.

(No. 746.)

SIR, High Commissioner's Office, Pretoria, 30th June, 1932.

I AM directed to advert to your letter of the 30th September last inquiring whether it would be possible, after the promulgation of the Bechuanaland Protectorate Mining Proclamation, for your Company to acquire, under the provisions of Clause 35 of the Proclamation, a Crown Grant in respect of diamond prospecting and mining over the area of the Protectorate not already held under concession by the British South Africa Company.

2. His Excellency the High Commissioner will be prepared to give consideration to proposals by your Company for the acquisition of such a Crown Grant, and for this purpose he will be glad to receive proposals in the form of a draft Grant as suggested in the last paragraph of your letter.

3. His Excellency has taken note of the provisions set forth in the second paragraph of your letter which your Company has suggested as a possible basis of such a Grant, and I am to say that, while the High Commissioner does not feel able, pending further consideration of the matter when the draft of the suggested Grant has been submitted to him, to state that these provisions will be acceptable, he agrees that, subject to the observations in this letter, they might be provisionally regarded as a basis of negotiation.

4. With reference to sub-paragraph (*a*) of the second paragraph of your letter, I am to observe, as regards the area of the proposed Grant, that it would be necessary to exclude from any Crown Grant not only such area or areas as may be affected by the concessionary rights held by the British South Africa Company but also all Native Reserves, any private land in respect of which the mineral rights are not held by the Crown, *e.g.*, the Tati district, and any areas in which the mineral rights are held by virtue of concession or otherwise by any private person or Company.

5. As regards the period of the Grant, and with reference to sub-paragraph (*d*) of the second paragraph and to the penultimate paragraph of your letter, I am to say that the High Commissioner considers that a clause should be inserted in the draft Deed to the effect that if at the end of ten years your Company should wish to obtain a renewal of the Grant the amount of the quota to be attributed to the Bechuanaland Protectorate must be considered *de novo*.

6. With reference to sub-paragraph (*b*), the High Commissioner considers that the amount which the grantee should undertake to spend, from the date to be agreed upon, on prospecting for diamonds should be not less than £5,000 per annum. The amount of rental to be paid per square mile will also require further discussion.

7. As regards the suggestion in sub-paragraph (*c*) that the grantee should have the right to peg alluvial claims as if he were the holder of a mineral concession, *i.e.*, that there should be no limit to the number of claims which might be pegged, and otherwise have the rights prescribed in Part VI of the Proclamation, I am to observe that any such rights would have to be subject to all the provisions of the Proclamation which would be applicable in respect of diamond mining, *e.g.*, Clause 58, which provides for the exercise of control over the working of alluvial mineral deposits where such working might result in irremediable damage being done to the soil.

8. A clause should be inserted in the draft Crown Grant to the effect that copies of all maps, plans of workings, geological surveys and prospecting records used or made in the course of prospecting shall be supplied to the Administration of the Bechuanaland Protectorate annually.

9. In conclusion, I am to make it clear that, while as indicated above, the High Commissioner will be prepared to receive and consider definite proposals by your Company if submitted to him in the form of a draft Crown Grant, His Excellency is not in a position at this stage to say that such a Crown Grant will be made. It will

be necessary for him to refer the matter to the Secretary of State in London on the question of principle before any agreement can be concluded. In this context I am to state that, in the event of your Company participating financially in the prospecting operations in the area covered by the British South Africa Company's agreement with the Acting Chief of the Bamangwato, the High Commissioner is able to give your Company an assurance that, so far as the diamond rights controlled by the Crown outside the British South Africa Company's area are concerned, prospecting rights for diamonds will not be granted until His Excellency's present negotiations with your Company have been either concluded or broken off.

I am, &c.,
SHIRLEY EALES,
Acting Imperial Secretary.

The Secretary,
De Beers Consolidated
Mines Limited.

20869/1.

No. 41.

DESPATCH

to

HIGH COMMISSIONER, SOUTH AFRICA.

[Answered by No. 46.]

(Bechuanaland Protectorate.)
(No. 304.)
(Confidential.)

SIR, Downing Street, 28th July, 1932.

WITH reference to the correspondence noted in the margin, I have the honour to transmit to you, copies of correspondence†† with the British South Africa Company regarding an inquiry by the Company whether, on the issue of the Bechuanaland Protectorate Mining Proclamation, the Secretary of State would be willing to reconsider the decision of 1924 in regard to the Linchwe Concession in the Bakgatla Reserve, should the Chief of the tribe be willing to grant to the Linchwe Concession Company a new concession similar to that granted by the Acting Chief to the Company in 1923 for a period of two years.

2. I shall be glad to learn your views and recommendations in this matter.

I have, &c.,
SANKEY.

To High Commissioner, 26th April, 1924. No. 140.*
From High Commissioner, 6th June, 1924. No. 441.†
To High Commissioner, 7th July, 1924. No. 187.‡
To High Commissioner, 21st January, 1925. Confidential.§
From High Commissioner, 5th June, 1925. Confidential, No. 2.‖
To High Commissioner, 6th December, 1928. Confidential.¶
Mr. Wiseman to Capt. Clifford, 6th December, 1928.**

20869/1.

No. 42.

DOMINIONS OFFICE

to

BRITISH SOUTH AFRICA COMPANY.

SIR, Downing Street, 28th July, 1932.

I AM directed to refer to your letter of 28th June‡‡ in which you inquire whether, when the Bechuanaland Protectorate Mining Proclamation, the draft of which is now under consideration, has been issued, the Secretary of State would be willing to reconsider the decision (as communicated to you in the letter from the Colonial Office

* No. 30 in Dominions (South African) No. 2.
† No. 38 in Dominions (South African) No. 2.
‡ Not printed.
§ D. 3126/25: not printed.
‖ No. 46 in Dominions (South African) No. 2.
¶ No. 24 in Dominions (South African) No. 3.
** D. 12489/28: not printed.
†† Nos. 36 and 42.
‡‡ No. 36.

of 5th June, 1924*) in regard to the Linchwe Concession in the Bakgatla Reserve, should the Chief of the Tribe be willing to grant the Linchwe Concession Company a new concession similar to that granted by the then Acting Chief to the Company in 1923 for a period of two years. I am to request you to inform the Board of the British South Africa Company that the High Commissioner for South Africa is being consulted in the matter, and that a further letter will be sent to you after Sir Herbert Stanley's reply has been received.

I am, &c.,
E. G. MACHTIG.

10141/147.

No. 43.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 15th August, 1932.)

(Bechuanaland Protectorate.)
(No. 421.)

SIR, High Commissioner's Office, Pretoria, 25th July, 1932.

WITH reference to my despatch No. 377 of the 30th June,† I have the honour to transmit herewith a copy of a letter from De Beers Consolidated Mines, Limited, regarding the desire of that Company to obtain a Crown Grant, under Clause 35 of the proposed Bechuanaland Protectorate Mining Proclamation, of the exclusive right to prospect and mine for diamonds over the area not already held under concession by the British South Africa Company.

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure in No. 43.

De Beers Consolidated Mines, Limited,
Kimberley, South Africa, 20th July, 1932.

SIR,

I BEG to acknowledge the receipt of your letter of the 30th June, setting out the conditions upon which His Excellency, the High Commissioner, would be prepared to give consideration to proposals by this Company for the acquisition of a Crown Grant to prospect for diamonds in the Bechuanaland Protectorate.

Your letter has had the consideration of my Board, and instructions have been given to the Company's Solicitors to proceed forthwith in the drafting of a Crown Grant on the lines of the proposals already made by my Company, with due regard to His Excellency's observations as conveyed in your letter under acknowledgment, and this will be sent to you in due course. I may say, however, that some little delay will probably occur in the submission of the draft Crown Grant to His Excellency, as it will be necessary to consult this Company's Chairman and Consulting Engineer in connexion therewith, and these two gentlemen are at present overseas.

Yours, &c.,
H. F. LARDNER BURKE,
Secretary.

The Imperial Secretary,
Office of the High Commissioner,
Pretoria.

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* 29755/24: not printed.
† No. 40.

10141 149.

No. 44.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 29th August, 1932.)

(Bechuanaland Protectorate.)
(No. 464.)

SIR, High Commissioner's Office, Pretoria, 10th August, 1932.

WITH reference to your telegram No. 59 of the 25th July,* I have the honour to transmit herewith copies† of the Bechuanaland Protectorate Mines and Minerals Proclamation in the form in which it has been signed by me, together with a copy† of a Notice fixing the 12th day of August as the date on which the Proclamation shall have force and effect.

2. A further Notice is being issued publishing the regulations relating to the registration of mining titles and rights and prescribing forms and fees. A draft of these regulations accompanied my despatch No. 367 of the 28th June.‡ A few minor amendments have since been made. Copies of these regulations as issued will be sent as soon as prints are available.

3. The Proclamation and both Notices will be published in my "Official Gazette" on the 12th instant.

4. I understand that the British South Africa Company is starting prospecting operations almost immediately, and Sir Drummond Chaplin has agreed to the issue of a Notice, under Section 6 (1) of the Proclamation, specifying the Bamangwato Reserve as an area to which the provisions of the Proclamation apply as from the date on which the Proclamation will come into operation. A copy of the Notice† which is being issued is attached.

5. I have asked the Acting Resident Commissioner to submit recommendations (*a*) as to any further areas to which, under Section 6 (1), the Proclamation might be applied, indicating whether all, or if not which, of its provisions should be so applied, and from what date, and (*b*) as to any area or areas which might be declared to be open for public prospecting under Section 6 (3).

I have, &c.,
H. J. STANLEY,
High Commissioner.

10141/151.

No. 45.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 5th September, 1932.)

(Bechuanaland Protectorate.)
(No. 476.)

SIR, High Commissioner's Office, Pretoria, 16th August, 1932.

WITH reference to paragraph 4 of your despatch No. 131 of the 30th March§ and my despatch No. 464 of the 10th August,‖ I have the honour to enclose, for your information a copy of the document on the subject of the position of Balkis Limited under the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932.

I have, &c.,
H. J. STANLEY,
High Commissioner.

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* 10141/142: not printed. † Not printed here. ‡ 10141/141: not printed.
§ 10141/123: not printed. ‖ No. 44.

Enclosure in No. 45.

SIR, High Commissioner's Office, Pretoria, 15th August, 1932.

I AM directed to submit to you, in your capacity as representative in South Africa of Balkis Limited, the accompanying copy of the High Commissioner's "Official Gazette" of the 12th August, promulgating a Proclamation (No. 33 of 1932) which has been issued by His Excellency making provision for prospecting and mining in the Bechuanaland Protectorate. It will be observed that by Notice No. 110 of 1932, issued in terms of Section 1 (1) of the Proclamation and also published in the enclosed "Gazette," the 12th day of August, 1932, was fixed by His Excellency as the date on which the Proclamation should have force and take effect. Regulations relating to registration of mining titles and rights and prescribing certain fees and forms are published under Notice No. 111 of 1932.

I am to invite special attention to the following provisions of the Proclamation, viz.:—

(i) Section 4 which relates to the registration of mineral concessions with the Registrar of Deeds for the Bechuanaland Protectorate at Mafeking;
(ii) Part III (and particularly Sections 31 and 32 thereof) which relates to prospecting and mining on land held under mineral concession; and
(iii) Section 6 (1) under which the High Commissioner may by notice in the "Gazette" specify areas within the Protectorate to which the Proclamation or such of its provisions as may be specified, shall apply from such date as may be specified in the Notice.

The High Commissioner has at present under consideration the question of applying the Proclamation to certain areas within the Protectorate, but before such action is taken in respect of any area affected by mineral concessions held by Balkis Limited, His Excellency would be glad to know whether you have any observations which you desire to submit on behalf of the Company for his consideration.

I am, &c.,
SHIRLEY EALES,
Acting Imperial Secretary.

D. P. C. Blair, Esq.

20869/2.

No. 46.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 19th September, 1932.)

(Bechuanaland Protectorate.)
(Confidential.)
(No. 511.)

SIR, High Commissioner's Office, Pretoria, 31st August, 1932.

I HAVE the honour to acknowledge the receipt of your despatch Confidential No. 304 of the 28th July* regarding the Linchwe Concession in the Bakgatla Reserve and to transmit herewith a copy of a despatch from the Acting Resident Commissioner of the Bechuanaland Protectorate.

2. I concur in the view expressed by Captain Reilly that there is no reason why the British South Africa Company should not be allowed to negotiate with the Chief of the Bakgatla with a view to the grant of a new concession similar to that granted in 1923. Provided that the terms of the new concession were satisfactory I should be prepared to recommend that it should be sanctioned and approved by you under the provisions of Section 45 of the Proclamation of the 10th June, 1891.

I have, &c.,
H. J. STANLEY,
High Commissioner.

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* No. 41.

Enclosure in No. 46.

SIR, Resident Commissioner's Office, Mafeking, 27th August, 1932.

I HAVE the honour to acknowledge the receipt of Your Excellency's despatch No. 1657 of the 22nd August, transmitting for my consideration and observations a copy of a confidential despatch No. 304 of the 28th July, from the Secretary of State relative to an inquiry by the British South Africa Company whether the decision of 1924 in regard to the Linchwe Concession in the Bakgatla Reserve might be reconsidered in the event of the Tribe being willing to grant a new concession similar to that granted in 1923 for a period of two years.

2. I see no reason why the British South Africa Company should not be allowed to negotiate with the Chief of the Bakgatla with a view to the grant of a new concession similar to that granted in 1923 for a period of two years, provided precious stones are excluded.

3. I consider that the only way to make the Mining Proclamation effective is by the grant of concessions to the Companies which have the necessary funds to carry out mining operations on a fairly large scale.

4. I should, however, be glad of an opportunity of considering the proposed terms of the concession before it is assented to.

I have, &c.,
R. REILLY,
Acting Resident Commissioner.

His Excellency
The High Commissioner,
Pretoria.

10141/152.

No. 47.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 26th September, 1932.)

(Bechuanaland Protectorate.)
(Confidential.)
(No. 523.)

SIR, High Commissioner's Office, Pretoria, 6th September, 1932.

WITH reference to Mr. Amery's Confidential despatch No. 41 of the 23rd January, 1929,* I have the honour to enclose, for your information, a copy of the documents on the subject of the mineral rights of the British South Africa Company in the Bakwena Reserve, Bechuanaland Protectorate.

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure 1 in No. 47.

(Bechuanaland Protectorate.)
(No. 1882.)
(Confidential.)

SIR, High Commissioner's Office, Pretoria, 22nd August, 1932.

I HAVE the honour to transmit herewith, for your consideration, a copy of a letter from Sir Drummond Chaplin regarding the mineral rights in the Bakwena Reserve.

2. In a Confidential despatch dated the 23rd January, 1929, regarding the draft mining law the Secretary of State wrote as follows in regard to this concession:—

"The . . . concession, as modified by Lord Ripon's despatch of the 15th January, 1895, gives the Company general prospecting rights for a period of five years from a date to be fixed, with the right to mark off during the period

* No. 26 in Dominions (South African) No. 3.

an area for mining operations not exceeding 10 miles square, and it was stated in Lord Ripon's despatch that the Concessionaires should arrange with the Chief the terms of the concession so far as they might affect the natives, subject to the approval of the Government. I am not sure whether there is in existence any formal document signed by the Chief embodying the terms of the modified concession: if not, it would seem necessary to arrange for such a document to be issued before any prospecting under the concession is commenced, and it will, of course, also be necessary to settle the date when the five years' period is to start."

Lord Ripon's above-mentioned despatch of the 15th January, 1895, is printed on pages 30-37 of White Book African (South) No. 537, Confidential.

3. You will observe from the enclosed letter that the original documents relating to the concession have been forwarded to the Registrar of Deeds at Mafeking, and I should be glad to learn whether, in the light of those documents, you think it advisable that the British South Africa Company should obtain a formal document signed by the Chief embodying the terms of the modified concession.

4. I should be glad also to learn whether you see any objection to the proposal in the last paragraph of the enclosed letter that the date on which the Mining Proclamation is applied to the Bakwena Reserve should be the date from which the Company's prospecting rights should be deemed to run.

I have, &c.,
H. J. STANLEY,
High Commissioner.

His Honour
The Acting Resident Commissioner
of the Bechuanaland Protectorate.

Enclosure 2 in No. 47.

THE RHODESIAN CHARTERED AGENCY LIMITED.

Northern Assurance Company's Buildings,
106-110, St. George's Street,
Cape Town, 18th August, 1932.

DEAR SIR,

Bakwena Concession.

THE British South Africa Company possesses the sole and exclusive right for a period of five years from a date to be fixed of prospecting for precious stones and precious metals within Sechele's territory, now known as the Bakwena Reserve, and the right within the period named to mark off an area for mining operations not exceeding ten miles square, by virtue of the Concession dated 28th August, 1889, granted by Chief Sechele to one Sydney Morris, as modified by despatch "South Africa, No. 16, Bechuanaland Protectorate," from Her Majesty's Secretary of State for the Colonies to the High Commissioner for South Africa, dated 15th January, 1895, and the amount of the annual payment to the Chief under the Concession was fixed at £180 per annum by the despatch "Bechuanaland Protectorate No. 100" from the High Commissioner for South Africa to the Resident Commissioner, Mafeking, dated the 4th September, 1902 (see High Commissioner's despatch to the Secretary of State, No. 937, of 6th September, 1902). The original documents relating to the Concession, with copies of the above-mentioned despatches, have been forwarded to the Registrar at Mafeking.

The British South Africa Company, having made arrangements with the Victoria Prospecting Company, Limited, for exercising the rights to prospect which the British South Africa Company has in the area of the Bakwena Concession, it is desirable to fix the date from which the British South Africa Company's sole right to prospect for precious metals in the area of the Bakwena Concession shall be deemed to run. It would be convenient that the said date should be the date upon which the Mines and Minerals Proclamation of 1932 is applied to the Bakwena Reserve, and I should be obliged if you would let me know whether there would be any objection to this course.

Yours, &c.,
DRUMMOND CHAPLIN.

The Imperial Secretary, &c.

Enclosure 3 in No. 47.

(Confidential.) The Resident Commissioner's Office,
SIR, Mafeking, 29th August, 1932.

I HAVE the honour to acknowledge the receipt of Your Excellency's Confidential despatch No. 1662 of the 22nd August, transmitting for my consideration a copy of a letter from Sir Drummond Chaplin regarding the mineral rights in the Bakwena Reserve.

2. I am not aware of the existence of any formal document signed by the Chief embodying the terms of the modified Concession which is referred to in the Secretary of State's Confidential despatch dated the 23rd January, 1929, but I consider that such a document should be prepared and signed by the parties concerned, viz., the Chief of the Bakwena and the British South Africa Company.

3. As the Chief has apparently accepted payment of the reduced rental mentioned in the High Commissioner's despatch No. 100 dated the 4th September, 1902, and referred to in Sir Drummond Chaplin's letter transmitted under cover of Your Excellency's despatch under reply, I think it may be fairly assumed that he is acquainted with and has agreed to recognize the modifications of the Concession contained in the Secretary of State's despatch above mentioned.

4. It would obviate any misunderstanding if the modifications were reduced to writing and filed on record with the Registrar of Deeds, and I suggest that Your Excellency inform Sir Drummond Chaplin accordingly.

5. In regard to the fourth paragraph of Your Excellency's despatch I consider that the Mining Proclamation should be applied to the Bakwena Reserve immediately, and that the date of such application should be the date from which the Company's prospecting rights should be deemed to run.

I have, &c.,
R. REILLY,
Acting Resident Commissioner.

His Excellency
The High Commissioner,
Pretoria.

Enclosure 4 in No. 47.

SIR, High Commissioner's Office, Pretoria, 3rd September, 1932.

IN reply to your letter of the 18th August, I am directed to inform you that His Excellency the High Commissioner agrees to the proposal that the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932, should, in terms of Section 6 (1) thereof, be applied to the Bakwena Native Reserve, and that His Excellency sees no objection to the suggestion that the period of five years within which the Company, by virtue of its Concession, may exercise general prospecting rights, with the right to mark off during that period an area for mining operations not exceeding 10 miles square, should commence from the date on which the Proclamation is applied to the Reserve. I am to inquire whether the Company would have any objection to the Proclamation being so applied forthwith.

2. In this connexion I am to invite attention to the concluding sentence of paragraph 32 iv (*a*) of Lord Ripon's despatch of the 15th January, 1895 (referred to in your letter) to the effect that it would be for "the Concessionaires to arrange with the Chief Sebele the terms of the Concession so far as they may affect the natives, subject to the approval of Government." The High Commissioner is not aware whether there is in existence any formal document signed by the Chief embodying the terms of the modified Concession. The Acting Resident Commissioner, who has been consulted, considers that such a document should be prepared and signed by the Chief of the Bakwena and by the Company. Captain Reilly thinks that, as the Chief has apparently accepted the annual payment of rental in respect of the Concession, it may be assumed that he is acquainted with and has accepted the modifications set forth in the Secretary of State's above-mentioned despatch, and he points out that it would obviate any misunderstanding if the modified Concession were reduced to writing and when approved by the Government, filed on record with the Registrar of Deeds.

I am, Sir,
SHIRLEY EALES,
Acting Imperial Secretary.

Sir Drummond Chaplin, G.B.E., K.C.M.G.

10141/153.

No. 48.

DESPATCH
from
HIGH COMMISSIONER, SOUTH AFRICA.
(Received 26th September, 1932.)

(Bechuanaland Protectorate.)
(No. 525.)
(Confidential.) High Commissioner's Office,
SIR, Pretoria, 6th September, 1932.

WITH reference to the second paragraph of my despatch No. 464 of the 10th August* on the subject of the Bechuanaland Protectorate Mines and Minerals Proclamation, I have the honour to transmit herewith prints† of the Regulations which have been issued relative to the registration of mining titles and rights and prescribing certain forms and fees.

2. I also transmit for your information a copy of correspondence, noted in the attached schedule, regarding the application of the Proclamation under Section 6 (1) to certain areas in the Protectorate, and with regard to proposals for declaring certain parts of the Protectorate to be open to public prospecting for minerals except diamonds in terms of Section 6 (3). It will be observed that Sir Drummond Chaplin has been asked whether the British South Africa Company has any observations to offer in regard to these proposals generally, and particularly whether, having regard to the Company's preferential rights in the Protectorate, it desires to make any application for a Crown Grant under Part IV of the Proclamation in respect of any of the areas which it is proposed to declare open for general prospecting.

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure 1 in No. 48.

SCHEDULE.

1932.	
11th August.	Despatch No. 682/21 from Acting Resident Commissioner, Bechuanaland Protectorate.
19th August.	Despatch No. 682/21 from Acting Resident Commissioner, Bechuanaland Protectorate.
22nd August.	Despatch Confidential No. 1678 to Acting Resident Commissioner, Bechuanaland Protectorate.
29th August.	Despatch No. 682/21 from Acting Resident Commissioner, Bechuanaland Protectorate.
3rd September.	Letter No. 1746 to Sir Drummond Chaplin.
3rd September.	Despatch Confidential No. 1746 to Acting Resident Commissioner, Bechuanaland Protectorate.

Enclosure 2 in No. 48.

(682/21.) The Resident Commissioner's Office,
SIR, Mafeking, 11th August, 1932.

I HAVE the honour to acknowledge the receipt of Your Excellency's despatch No. 1536 of the 6th August transmitting prints of the Mines and Minerals Proclamation in the form in which it has been signed by Your Excellency, together with copies of notices relating to the effective date of the Proclamation and the issue of Regulations concerning the registration of Mining Titles and Rights.

2. With reference to paragraph 5 of Your Excellency's despatch regarding the areas to which the Mining Proclamation might be applied, I have the honour to recommend for Your Excellency's consideration that the Proclamation be applied by notice

* No. 44 † Not reprinted.

under *Section* 6 (1), to the extent and from the dates mentioned, to the following areas:—

(1) *Bamangwato Concession Area—(British South Africa Company) as approved by the Secretary of State.* The whole of the Proclamation as from the date of its promulgation to be applied to this area.

(2) *The whole of the original areas of the Bakwena and Bangwaketse Concessions (Balkis Land Company) as approved by the Secretary of State. See Section 32 of the Proclamation.*

The whole of the Proclamation as from the date of its promulgation to be applied to these areas.

Under the provisions of Section 39 (2) it is necessary for the holders of the above Concessions to obtain a Crown Grant before prospecting for and the winning of diamonds may take place.

(3) *Batawana Native Reserve.*

The whole of the Proclamation as from the date of its promulgation to be applied to this Reserve.

Prospecting for and the winning of diamonds on the Reserve is prohibited except by means of a Crown Grant issued under the provisions of Section 39 (2).

The provisions of the draft Proclamation have been favourably received by the Chief and tribe of this Reserve, but before recommending that it be thrown open to public prospecting under Section 6 (3), I wish to await a reply to a communication on this subject which I have addressed to the Magistrate at Maun.

(4) *Tuli, Gaberones and Lobatsi Blocks.*

The whole of the Proclamation as from the date of its promulgation to be applied with the consent of the British South Africa Company to the area comprising these Blocks.

The whole of this area is vested in the British South Africa Company under Proclamations Nos. 4, 12 and 13 of 1905, and the application of the Mining Proclamation thereto may assist in clarifying the legal position which at present, it is admitted, is somewhat obscure. In this context I would invite Your Excellency's attention to Section 3 of each of the Proclamations above quoted.

(5) *Ghanzi Magisterial District. (Crown Land.)*

The whole of the Proclamation as from the date of its promulgation to be applied to this District. Prospecting for and the winning of diamonds on Crown Land is prohibited except by means of a Crown Grant issued under Section 39 (2).

(6) *Bakgatla Native Reserve.*

The whole of the Proclamation as from the date of its promulgation to be applied to this Reserve.

As in the case of the Batawana Reserve referred to in paragraph 1 (3) hereof, prospecting and the winning of diamonds on this Reserve is prohibited except by authority of a Crown Grant issued under the provisions of Section 39 (2).

From the records here no Concession exists in this Reserve. The Linchwe Concession granted in 1898 to Julius Weil, a half share in which was subsequently acquired by the British South Africa Company, having expired in 1913.

A new Agreement entered into later between the Chief and the Linchwe Concession Company has not, as far as I am aware, received the approval of the Secretary of State. In this connexion I would refer Your Excellency to Lord Athlone's despatch, No. 131, addressed to the Secretary of State on the 12th March, 1926, a copy of which was received here under cover of despatch No. 179 of the 13th March, 1926.

3. I further recommend for Your Excellency's consideration that the Ghanzi Magisterial District be thrown open to public prospecting, excluding diamonds, under Section 6 (3), after consultation with the British South Africa Company regarding the mineral rights, if any, held by the Company in this area, and the coming into operation of the Immigration Proclamation referred to in my telegram No. 467 of the 9th August, 1932, and Your Excellency's telegram in reply thereto, No. 66 of the same date.

4. In order that officers of this Administration may exercise jurisdiction under the Proclamation immediately it is applied I would suggest for Your Excellency's consideration that the Magisterial Districts of N'gamiland, Chobe, Ngwato, Tuli Block, Gaberones, Kweneng, Lobatsi, Ngwaketse, Ghanzi and Kgalagadi be now declared Mining Districts in terms of Section 85 of the Proclamation and that Your Excellency be pleased also to appoint, in terms of Sub-section 2 of that Section the Magistrates or Acting Magistrates for the time being as Mining Commissioners in their respective districts.

I have, &c.,
R. REILLY,
Acting Resident Commissioner.

His Excellency
The High Commissioner,
Pretoria.

Enclosure 3 in No. 48.

(682/21.) Resident Commissioner's Office,
Mafeking, C.P., 19th August, 1932.

SIR,

I HAVE the honour to refer Your Excellency to my despatch of the 11th August submitting, in accordance with directions contained in Your Excellency's despatch of the 6th August, recommendations as to the areas to which under Section 6 (1) the Mining Proclamation might be applied.

2. As a result of applications received at these offices for prospecting permits and inquiries generally from prospectors and others concerning the provisions of the Proclamation I desire, on further consideration of this matter, to recommend for Your Excellency's consideration that the Bamalete Native Reserve and the Magisterial Districts of Kgalagadi and Chobe excluding the area defined in High Commissioner's Notice No. 53 of 1932 dated 4th April, 1932, relating to the protection of game be added to the areas mentioned in paragraph 2 of my despatch above-mentioned in respect to which the provisions of the Proclamation should be applied under Section 6 (1). Assuming that Your Excellency agrees with this recommendation and the recommendations contained in my previous despatch, the effect will be that the whole of the provisions of the Proclamation will have been applied under Section 6 (1) to the whole of the Protectorate with the exception of the Francistown Magisterial area (Tati District) and the Game area above-mentioned. I would suggest that the required notice should take effect from the date of the promulgation of the Proclamation, unless Your Excellency considers that the notice should not have retrospective effect, in which case I suggest the effective date be that on which the notice appears in the "Gazette."

3. I further recommend for Your Excellency's consideration that the Magisterial Districts of Kgalagadi and Chobe, excluding the Game area referred to in a preceeding paragraph be thrown open to public prospecting, excluding diamonds, under Section 6 (3) subject to the conditions attaching to my recommendations concerning the Ghanzi Magisterial District, viz., after consultation with the British South Africa Company as to the mineral rights, if any, held by that Company and the coming into force of the Immigration Proclamation and Regulations.

4. As a portion of the N'Gamiland District is included in the Game area defined in High Commissioner's Notice No. 53 of 1932 above-mentioned, it is submitted for Your Excellency's consideration that such portion be excluded from the Batawana Native Reserve in any notice relating to this area which may be published under Section 6 (1) in accordance with the recommendations contained in paragraph 2 (3) of my previous despatch to Your Excellency referred to in paragraph 1 hereof.

I have, &c.,
R. REILLY,
Acting Resident Commissioner.

His Excellency
The High Commissioner,
Pretoria.

Enclosure 4 in No. 48.

(Bechuanaland Protectorate.)
(No. 1678.)
(Confidential.)

High Commissioner's Office,
Pretoria, 22nd August, 1932.

SIR,

I HAVE the honour to acknowledge the receipt of your despatch of the 11th August submitting recommendations regarding (a) the areas in the Protectorate to which the Mines and Minerals Proclamation might be applied under Section 6 (1), and (*b*) the areas which might be thrown open to public prospecting excluding diamonds, under Section 6 (3) of the Proclamation.

2. The application of the Proclamation to the Bamangwato Reserve was effected by Notice No. 112 of the 12th August, and I am at present awaiting a reply to a letter which has been addressed to Mr. D. P. C. Blair, the representative in South Africa of Balkis Limited—see my despatch No. 1534 of the 16th August—before considering what action might be taken in respect of the area covered by the concessions held by that Company.

3. The other areas to which you have recommended that the Proclamation should be applied are—

(1) the area covered by the Bakwena (Sechele) Concession;
(2) the Batawana Native Reserve;
(3) the Tuli, Gaberones and Lobatsi Blocks;
(4) the Ghanzi magisterial area;
(5) the Bakgatla Native Reserve.

4. As regards (1) I would refer to my despatch No. 1662 of to-day forwarding a copy of a letter from Sir Drummond Chaplin, setting forth the British South Africa Company's proposals in respect of the Bakwena Reserve.

5. As regards (3) I would observe that the Lobatsi Block falls within the area covered by the concessions held by the Balkis Company and that the question of the application of the Proclamation to the Lobatsi Block must therefore stand over for the present. There would not appear, however, to be any objection to the application of the Proclamation to the Tuli and Gaberones Blocks, but I think that before it is so applied the British South Africa Company, as owners of the mineral rights (see my despatch No. 1661 of to-day), should be informed of the proposal to apply it.

6. As regards (5) I am forwarding to you in my despatch No. 1657 of to-day, a copy of a despatch from the Secretary of State relative to an inquiry by the British South Africa Company whether the decision of 1924 in regard to the Linchwe Concession in the Bakgatla Reserve might be reconsidered in the event of the tribe being willing to grant a new concession.

7. I agree that the Bakwena Reserve (subject to the settlement of the point raised in my above-mentioned despatch No. 1662 of to-day), the Batawana Reserve, the Bakgatla Reserve, and the Ghanzi magisterial district, as well as the Tuli and Gaberones Blocks (subject to any observations which the British South Africa Company may wish to offer) might be specified under Section 6 (1) as areas to which the provisions of the Proclamation shall apply, and I suggest that you might consider whether there are any reasons why the Proclamation should not also be applied to the Crown Lands in the northern and southern portions of the Protectorate.

8. Subject to the following observations, I should be prepared to agree to the Ghanzi magisterial district being thrown open to prospecting for minerals, excluding diamonds. Before action is taken, however, it will be necessary, in view of the British South Africa Company's preferential rights, to ascertain whether the Company have any observations to offer. In this context I may explain that when the provisions of the mining law were under consideration in draft form it was thought desirable to ascertain whether the Company might be prepared to consider an arrangement for the commutation of their preferential rights in exchange for some proportion of any mining royalties received by the Crown over a limited period of time. The matter was discussed with representatives of the Company at a meeting at the Dominions Office on the 30th November, 1928; but as it did not appear that the Company would be prepared to consider a limited arrangement of this kind, it was thought better to abandon the idea and proceed on the basis of the Draft Mining Proclamation. The Company mentioned in this connexion that, though the point did not appear to be specifically provided for in the Proclamation, they understood that Crown Lands would not be thrown open to public prospecting without the Company being first given the option of taking a Crown Grant in respect of the area concerned. Subsequently Sir Drummond Chaplin, in a letter dated the 18th January, 1929, stated that the Company thought it would probably be better that the Company should retain its preferential rights, and he added that in any case if it were desired to commute them this could form the subject of negotiations and agreement at any time. In a Confidential despatch (No. 41) dated the 23rd January, 1929, the Secretary of State expressed the view that the best course seemed to be that it should be left for the representatives of the Company, if they so desire, to put forward further proposals.

9. In the circumstances I propose, unless you desire to submit any further observations, to inform the Company that I have under consideration a proposal to declare, in terms of Section 6 (3) of the Proclamation, the Ghanzi magisterial district to be open for prospecting, except diamonds, subject to the provisions of the Proclamation, and to inquire whether, having regard to the Company's preferential rights in the Protectorate, they have any observations to offer, or whether they desire to submit for my consideration an application for a Crown Grant in respect of this area under Part IV of the Proclamation.

10. As regards the question of prospecting in the Batawana Reserve, I do not contemplate that in present circumstances prospecting for minerals should take place except in terms of an approved mineral concession or under a Crown Grant issued in virtue of the provisions of Part IV of the Proclamation. In this context I may refer to paragraph 28 of the explanatory Memorandum which was issued when the Mining Proclamation was published in draft form for public information. As regards the Bakgatla Reserve, I would refer to my above-mentioned despatch No. 1667 of to-day.

11. Since writing the above I have received this morning your despatch No. 682/21 of the 19th August, but before considering the matter further I will await the receipt of your reply to this despatch.

I have, &c.,
H. J. STANLEY,
High Commissioner.

His Honour
The Acting Resident Commissioner
of the Bechuanaland Protectorate.

Enclosure 5 in No. 48.

Resident Commissioner's Office,
Mafeking, C.P., 29th August, 1932.

SIR,

I HAVE the honour to acknowledge the receipt of Your Excellency's Confidential despatch No. 1678 of the 22nd August, conveying Your Excellency's decision in the matter of the recommendations submitted by me concerning various areas within the Protectorate which might be dealt with under the provisions of Section 6 (1) and 6 (3) of the Mines and Minerals Proclamation, 1932, from which I note the following:—

(2) *Bamangwato Native Reserve.* The Proclamation was applied to this area by High Commissioner's Notice No. 112 of the 12th August.

I desire to inform Your Excellency that application for the registration of the Concession in favour of the British South Africa Company dated 21st March, 1932, affecting this area has now been made to the Registrar of Deeds.

(3) *Bangwaketsi Native Reserve.* That, before deciding to apply the Proclamation to this Reserve, Your Excellency awaits a reply to a communication, sent by Your Excellency's direction to the South African representatives of the Balkis Company, calling for the Company's observations. I shall make certain proposals in connexion with this Concession when I reply to Your Excellency's despatch No. 1534 of the 16th August.

(4) *Bakwena Native Reserve (Sechele Concession).* That Your Excellency agrees to the application of the Proclamation to this area, subject to the settlement of the point raised in your Confidential despatch No. 1662 of the 22nd August, which matter is now being considered by me and will form the subject of a separate despatch to Your Excellency.

It is also noted that Your Excellency is aware that application for the registration of the Concession affecting this Reserve has been made by the British South Africa Company.

(5) *Lobatsi Block.* That the matter of the application of the Proclamation to this area must stand over, seeing that it falls within the area affected

by the Concessions held by the Balkis Company and which Concessions affect also the Bangwaketsi Reserve.

(6) *Tuli and Gaberones Blocks.* That Your Excellency has no objection to the application of the Proclamation to these Blocks, but before this is done the British South Africa Company, as owners of the Mineral Rights, should be informed. It is assumed that Your Excellency will cause the required communication on this subject to be sent direct to the Company.

(7) *Bakgatla Native Reserve.* That Your Excellency agrees to the application of the Proclamation to this Reserve subject to any observations which the British South Africa Company may wish to offer. It is assumed in this case also that Your Excellency will cause the necessary inquiry to be sent to the Company.

Regarding Your Excellency's despatch No. 1657 of the 22nd August dealing with an inquiry by the British South Africa Company concerning the reconsideration by the Secretary of State of the 1924 decision on the Linchwe Concession, this matter is now under consideration by me and will form the subject of a separate despatch to Your Excellency.

(8) *Batawana Native Reserve.* That Your Excellency agrees to the application of the Proclamation to this Reserve subject to any observations which the British South Africa Company may wish to offer and which no doubt will be called for direct from the Company by Your Excellency.

In the matter of this Reserve I desire to invite Your Excellency's attention to paragraph 4 of my despatch No. 682/21 of the 19th August modifying the recommendation made in my despatch of the same number of the 11th August. I regret to say that the statement that portion of the Batawana Reserve is included in the Game area is not correct, but in view of the expected controversy in regard to the Eastern Boundary of the Batawana Reserve it may still prove to be so.

It is also noted that Your Excellency considers that this area should not be declared open to prospecting under Section 6 (3) but that prospecting in this Reserve should only be allowed in terms of an approved Mineral Concession or under Crown Grant issued under the provisions of Part IV of the Proclamation.

(9) *Ghanzi Magisterial Area.* That Your Excellency agrees to the application of the Proclamation to this area, subject to any observations which the British South Africa Company may wish to offer and which it is assumed will be called for direct by Your Excellency as in the case of the Batawana and Bakgatla Reserves.

I note that Your Excellency is prepared to declare this area open to prospecting, excluding diamonds, under the provisions of Section 6 (3), but that in view of the British South Africa Company's preferential rights you will first obtain that Company's observations.

I have, &c.,
R. Reilly,
Acting Resident Commissioner.

His Excellency
The High Commissioner,
Pretoria.

Enclosure 6 in No. 48.

Sir, High Commissioner's Office, Pretoria, 3rd September, 1932.

I am directed to inform you that the High Commissioner has under consideration the question of the application of the provisions of the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932, in terms of Section 6 (1) thereof, to certain areas of the Bechuanaland Protectorate, in addition to the Bamangwato Reserve to which they have already been applied. The areas to which it is proposed that the Proclamation should now be applied are as follows:—

(a) the Ghanzi, Kgalagadi and Chobe magisterial districts;
(b) the Tuli and Gaberones Blocks; and
(c) the Bakwena, Bakgatla and Batawana Native Reserves.

As regards the Bakwena Reserve I would refer to my letter No. 1747 of to-day.

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2. His Excellency has also under consideration a proposal that, unless the British South Africa Company in the exercise of its preferential rights now applies for a Crown Grant, the Ghanzi, Kgalagadi, and Chobe magisterial districts (with the exception of that portion of the Chobe district which in terms of High Commissioner's Notice No. 53 of the 4th April, 1932, has been defined as a protected area for game) should be declared, in terms of Section 6 (3) of the Proclamation, to be open for prospecting for minerals, except diamonds, without prejudice, however, to the consideration by the High Commissioner of any applications which may have been or may hereafter be received from parties other than the Company for the issue of a Crown Grant under Section 35 of the Proclamation.

3. Before coming to a decision, the High Commissioner would be glad to learn whether the British South Africa Company has any observations to offer in regard to these proposals generally, and particularly whether, having regard to the Company's preferential rights in the Protectorate, it desires to submit for His Excellency's consideration any application for a Crown Grant under Part IV of the Proclamation in respect of any portion of the Ghanzi, Kgalagadi and Chobe magisterial districts.

4. An early reply to this letter would be much appreciated.

I am, &c.,
Shirley Eales,
Acting Imperial Secretary.

Sir Drummond Chaplin, C.B.E., K.C.M.G.

Enclosure 7 in No. 48.

(Bechuanaland Protectorate.)
(No. 1746.) High Commissioner's Office,
Pretoria, 3rd September, 1932.

Sir,

I have the honour to acknowledge the receipt of your despatch No. 682/21 of the 29th August with reference to the action which it is proposed should be taken under the provisions of Sections 6 (1) and 6 (3) of the Mines and Minerals Proclamation, 1932, and to enclose, for your information, a copy of a letter which has been addressed to Sir Drummond Chaplin.

2. It will be observed that Sir Drummond Chaplin has been informed that, in the event of the Chobe district being declared, under Section 6 (3) of the Proclamation, to be open to prospecting for minerals except diamonds, it is contemplated that the area in that district which has been defined as a protected area for game should be excluded, but I should be glad to learn why you think it advisable to exclude that area from the proposed application of the Proclamation to the Chobe district under Section 6 (1)—(see paragraph 2 of your despatch of the 19th August).

3. As regards the question of the application of the Proclamation to the Bamalete Native Reserve, I would refer to my predecessor's Confidential telegram of the 10th June, 1927, transmitting a message from the Secretary of State of the same date to the effect that it seemed necessary to act on the assumption that the Balkis Company's rights under their concessions extend to the Bamalete Reserve.

4. I will address a further communication to you when Sir Drummond Chaplin's reply to the enclosed letter has been received.

I have, &c.,
H. J. Stanley,
High Commissioner.

His Honour
The Acting Resident Commissioner
of the Bechuanaland Protectorate.

10141/154.

No. 49

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 26th September, 1932.)

(Bechuanaland Protectorate.)
(No. 530.)

SIR, High Commissioner's Office, Pretoria, 7th September, 1932.

WITH reference to my despatch No. 476 of 16th August,* I have the honour to enclose, for your information, a copy of the documents on the subject of the position of Balkis Limited under the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932.

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure 1 in No. 49.

(No. 5277.) The Resident Commissioner's Office,
Mafeking, 29th August, 1932.

SIR,

I HAVE the honour to acknowledge the receipt of Your Excellency's despatch No. 1534 of the 16th August, transmitting a copy of a letter addressed by the Acting Imperial Secretary to the South African representative of Balkis Limited on the subject of that Company's position under the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932.

2. I consider that the Mining Proclamation should be applied to that area affected by Mineral Concessions held by Balkis Limited, viz., the Bangwaketsi Reserve and the Lobatsi Block as soon as possible, and that the representative of the Company in South Africa should be informed of the proposed date. This procedure would obviate any delay on the Company's part in selecting their Concession area and commencing operations.

3. I think also that Balkis Limited have had ample time in which to make any representations they may have deemed desirable seeing that the Proclamation was published in the "Official Gazette" some months ago.

I have, &c.,
R. REILLY,
Acting Resident Commissioner.

His Excellency
The High Commissioner,
Pretoria.

Enclosure 2 in No. 49.

23, Aegis Buildings, Loveday Street,
Johannesburg, 2nd September, 1932.

SIR,

Balkis Limited.

I HAVE to acknowledge with thanks your favour of the 15th ultimo with enclosures as stated therein.

I have sent a copy of your letter to my Board in London asking them whether they have any observations to make on the question of applying the Proclamation to certain areas within the Protectorate, and will advise you so soon as I hear from them.

I am, &c.,
D. P. C. BLAIR.

The Imperial Secretary,
High Commissioner's Office,
Pretoria.

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* No. 45.

3/0

Enclosure 3 in No. 49.

(Bechuanaland Protectorate.)
(No. 1745.)

SIR, High Commissioner's Office, Pretoria, 7th September, 1932.

I HAVE the honour to acknowledge the receipt of your despatch No. 5277 of the 29th August with reference to the position of Balkis Limited under the Mines and Minerals Proclamation, 1932, in respect of its Concessions in the Bechuanaland Protectorate, and to enclose herewith a copy of a letter received from Mr. D. P. C. Blair in acknowledgment of the communication which was addressed to him from this Office on the 15th August.

With reference to the suggestion in the second paragraph of your despatch, I think that before considering the expediency of fixing a date on which the Proclamation should be applied to the areas affected by the Balkis Company's Concessions, the Company should be given a reasonable period of time, subsequent to the receipt by Mr. Blair of the above-mentioned letter of the 15th August, in which to submit their views. You will observe that Mr. Blair is consulting his Board in London.

I have, &c.,
H. J. STANLEY,
High Commissioner.

His Honour
The Acting Resident Commissioner
of the Bechuanaland Protectorate.

20869/2.

No. 50.

DOMINIONS OFFICE to BRITISH SOUTH AFRICA COMPANY.

SIR, Downing Street, 11th October, 1932.

WITH further reference to your letter of 28th June,* I am directed by Mr. Secretary Thomas to state that he has now received the observations of the High Commissioner for South Africa in regard to your inquiry as to the Linchwe Concession in the Bakgatla Reserve of the Bechuanaland Protectorate. After considering these, Mr. Thomas desires me to request you to inform your Board that, if the Chief of the Bakgatla should be willing to grant the Linchwe Concession Company a new concession similar to that granted in 1923, Mr. Thomas would be prepared to consider approving it under the provisions of Section 45 of the Bechuanaland Protectorate Proclamation of the 10th June, 1891, provided, of course, that he regarded its terms as satisfactory.

2. The above should be taken to refer to minerals other than diamonds. As the Company are aware (*vide* Sir Drummond Chaplin's letter of 6th April, 1932,† to Sir H Stanley), special arrangements are under consideration as regards diamond prospecting and mining in the Protectorate.

I am, &c.,
E. G. MACHTIG.

20869/3.

No. 51.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 11.17 a.m., 26th October, 1932.)

[*Answered by No.* 52.]

No. 99. CONFIDENTIAL. 26th October. My despatch of 31st August, No. 511, Confidential.‡ Linchwe Concession. Resident Commissioner reports that Chief Molefi and ex-Chief Isang have informed him that they are willing to negotiate with British

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* No. 36. † 10141/131, not printed. ‡ No. 46.

South Africa Company for grant of new concession on basis of that granted in 1923. May I inform Chaplin accordingly and say that you have no objection to such negotiations being opened.—HIGH COMMISSIONER.

20869/3.

No. 52.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 8 p.m., 1st November, 1932.)

[*Answered by No. 57.*]

No. 96. CONFIDENTIAL. Your telegram 26th October No. 99.* I concur but Chaplin's attention should be drawn to paragraph 2 of letter of 11th October† to British South Africa Company enclosed in my despatch 11th October No. 405.‡ As regards Chiefs they should be given clearly to understand that while the Government has no objection to their negotiating fresh agreement with the Company, the Government is not asking them to do so and that they have a free hand in the matter.—THOMAS.

10141/157.

No. 53.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 14th November, 1932.)

(Bechuanaland Protectorate.)
(Confidential.)
(No. 637.)

SIR, High Commissioner's Office, Pretoria, 26th October, 1932.

WITH reference to my Confidential despatch No. 523 of the 6th September§ regarding the mineral rights of the British South Africa Company in the Bakwena Reserve, I have the honour to transmit herewith, for your information, a copy of correspondence with the Resident Commissioner of the Bechuanaland Protectorate and Sir Drummond Chaplin.

2. With regard to the suggestion made in paragraph 2 (iv) of Mr. Amery's despatch Confidential No. 41 of the 23rd January, 1929,‖ that it would seem necessary to arrange for some formal document signed by the Chief embodying the terms of the modified Concession to be issued before any prospecting under the Concession was commenced, you will observe from Sir Drummond Chaplin's letter of the 20th September, 1932, that no document is in existence signed by the Chief setting out in detail the terms of the modified Concession, but that as the Chief has for many years accepted payment of rent in terms of the Agreement dated the 6th August, 1903 (see the High Commissioner's despatch No. 782 of 24th August 1903¶), Sir Drummond considered that it must be assumed that he has accepted the obligations of the Concession in its amended form. Sir Drummond suggested that it might meet the case if the Chief were officially informed that in terms of the modified Concession the commencement of prospecting had been approved by the Administration.

3. As the British South Africa Company were apparently content that their mineral rights in the Reserve should continue to rest upon the terms of the original Concession of the 28th August, 1889, as modified by Lord Ripon's despatch of the 15th January, 1896,** I thought it unnecessary to press them to obtain any formal document signed by the Chief embodying the terms of the modified Concession, and I suggested to the Acting Resident Commissioner that, if he saw no objection, the

* No. 51. † No. 50. ‡ 20869/2: not printed. § No. 47.
‖ No. 26 in Dominions (South African) No. 3. ¶ No. 333 in African (South) No. 717.
** No. 5 in African (South) No. 537.

Chief might be informed in the sense suggested in Sir Drummond Chaplin's letter. The terms of the communication made to the Chief will be found in Captain Howe's enclosed despatch No. 5286/1 of the 1st October, and the Resident Commissioner reported in his despatch of the 11th October that the Magistrate had explained the communication to the Chief who had made no comment.

4. Notices have now been issued applying the Mines and Minerals Proclamation to the Bakwena Reserve, declaring the Reserve to be a Mining District, and appointing the Magistrate to act as a Mining Commissioner.

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure 1 in No. 53.

The Rhodesia Chartered Agency Limited,
106-110, St. George's Street,
Cape Town, 20th September, 1932.

DEAR SIR,

I HAVE to acknowledge receipt of your letter, No. 1747 of the 3rd instant, on the subject of the Bakwena Concession, from which I note that His Excellency the High Commissioner sees no objection to the suggestions that the Mines and Minerals Proclamation should be applied to the Bakwena Native Reserve and that the period of five years within which the Company may exercise general prospecting rights, with the right to mark off an area for mining operations not exceeding 10 miles square, should commence from the date on which the Proclamation is applied to the Reserve.

So far as I can ascertain there is not in existence any formal document signed by the Chief setting out in detail the terms of the modified Concession, which have no doubt been assumed by everyone concerned to be as stated in Lord Ripon's despatch of the 15th January, 1896. There is, however, in existence an Agreement, dated the 6th August, 1903, between the British South Africa Company and Sebele, signed by Sebele in the presence of the then Government Secretary for the Bechuanaland Protectorate and of which you probably have a copy providing that—

(1) The Chief and the Company mutually release each other from all claims or causes of action in respect of the payment or non-payment of rents in respect of the Concessions known as the Secheleland Concessions and the Riesle and Nicholls Concessions, and all other Concessions granted by the said Chief Sechele and which have been disallowed;

(2) As from 1st January, 1903, the rent to be paid to Sebele, or his successors, in respect of the Secheleland Concession shall be £180 per annum, and the rent to be paid in respect of the Riesle and Nicholls Concession and all other Concessions disallowed £225 per annum.

From this it seems clear that the Chief at that time was fully aware of the position, and as he has for many years past accepted the annual payment of rental it must, I think, be assumed that he has accepted the obligations of the Concession in its amended form. It would not, therefore, seem necessary now to raise that question with the Chief. If he were now informed by the Magistrate, or other official responsible for the District, that in terms of the modified Concession the commencement of prospecting has been approved by the Administration, this would seem to meet the case and would obviate any delay which might interfere with the starting of prospecting in the Reserve.

Yours, &c.,
DRUMMOND CHAPLIN.

The Imperial Secretary,
High Commissioner's Office,
Pretoria.

Enclosure 2 in No. 53.

(Bechuanaland Protectorate.)
(No. 1908.)
(Confidential.)

SIR, High Commissioner's Office, Pretoria, 27th September, 1932.

WITH reference to my Confidential despatch No. 1747 of the 3rd September, I have the honour to transmit herewith a copy of a further letter which has been

received from Sir Drummond Chaplin regarding the mineral rights of the British South Africa Company in the Bakwena Reserve.

2. It will be observed that the enclosed letter does not contain any answer to the question asked in the second paragraph of the letter of the 3rd September from this Office, whether the Company is agreeable to the Mines and Minerals Proclamation being applied to the Reserve forthwith. A telegraphic inquiry on this point has been sent to Sir Drummond Chaplin.

3. A copy of the Agreement, dated the 6th August, 1903, to which reference is made in the second paragraph of the enclosed letter, was transmitted to this Office in the late Sir Ralph (then Mr.) Williams' despatch No. 89 of the 13th August, 1903 (see High Commissioner's despatch to Secretary of State, No. 782, 24th August, 1903). In view of that Agreement in regard to the payment to the Chief of the Bakwena of rent in respect of the Concession, and as the Company is apparently content that its mineral rights in the Reserve should continue to rest upon the terms of the original Concession of the 28th August, 1889, in favour of Sydney Morris as modified by Lord Ripon's despatch of the 15th January, 1895, it hardly seems necessary to press the Company to obtain any formal document signed by the Chief embodying the terms of the modified Concession. In these circumstances I think that, unless you see any serious objection, the Chief might be informed by the Administration in the sense suggested in the last paragraph of the enclosed letter.

I have, &c.,
H. J. STANLEY,
High Commissioner.

His Honour
The Acting Resident Commissioner of the
Bechuanaland Protectorate.

Enclosure 3 in No. 53.

(No. 5286/1.) Resident Commissioner's Office,
Mafeking, 1st October, 1932.

SIR,

I HAVE the honour to acknowledge the receipt of Your Excellency's despatch No. 1908 of the 27th September, 1932, transmitting a copy of a letter from Sir Drummond Chaplin regarding the mineral rights of the British South Africa Company in the Bakwena Reserve, and to state that I see no objection to Your Excellency's suggestion contained in the last paragraph thereof.

2. I have accordingly instructed the Magistrate concerned to inform Chief Kgari Sechele—

(*a*) that it is Your Excellency's intention to apply the provisions of the Mines and Minerals Proclamation No. 33 of 1932 in terms of Section 6 (1) to the Bakwena Reserve;
(*b*) that the British South Africa Company intends undertaking active prospecting operations in the Reserve almost immediately; and
(*c*) that the commencing date of the period of five years within which the Company shall select its mining area of ten miles square in terms of its Mineral Concession, as modified by the Secretary of State, shall be the date on which the Proclamation is applied to the Reserve as mentioned in (*a*).

I have, &c.,
D. W. How
(for Acting Resident Commissioner).

His Excellency
The High Commissioner,
Pretoria

Enclosure 4 in No. 53.

(Bechuanaland Protectorate.)
(No. 1908.) High Commissioner's Office, Pretoria, 8th October, 1932.

SIR,

I HAVE the honour to acknowledge the receipt of your despatch No. 5286/1 of the 1st October regarding the application of the provisions of the Mines and Minerals Proclamation to the Bakwena Reserve.

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2. I note the terms of the communication which the magistrate has been instructed to make to Chief Kgari Sechele but before proceeding to issue the required Notice in terms of Section 6 (1) of the Proclamation, I should be glad to learn that the Chief has received the communication.

3. If it is desired that following upon the application of the Proclamation the Reserve should be declared a Mining District, and the Magistrate appointed a Mining Commissioner, I should be obliged if you would submit draft Notices for publication in the "Gazette."

I have, &c.,
H. J. STANLEY,
High Commissioner.

His Honour
The Resident Commissioner of the
Bechuanaland Protectorate.

Enclosure 5 in No. 53.

(No. 5286/1.) The Resident Commissioner's Office,
Mafeking, 11th October, 1932.

SIR,

I HAVE the honour to acknowledge the receipt of Your Excellency's despatch No. 1908 of the 8th October regarding the application of the provisions of the Mines and Minerals Proclamation to the Bakwena Reserve.

2. The Magistrate at Molepolole informs me that he has explained the contents of my communication to Chief Kgari Sechele, who has made no comment.

3. I consider that the Reserve should be declared a Mining District and the Magistrate appointed a Mining Commissioner and draft Notices are submitted for Your Excellency's consideration and publication in the "Gazette" if approved.

I have, &c.,
C. F. REY,
Resident Commissioner.

His Excellency
The High Commissioner,
Pretoria.

Enclosure 6 in No. 53.

SIR, High Commissioner's Office, Pretoria, 19th October, 1932.

I HAVE the honour to acknowledge the receipt of your telegram of the 27th September in which you signified your concurrence in the issue of a Notice, under Section 6 (1) of the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932, specifying the Bakwena Reserve as an area to which the provisions of the Proclamation shall apply; and to inform you that following upon the suggestion made in the final paragraph of your letter of the 20th September the Chief Kgari Sechele has been informed—

(*a*) that it is the intention of the High Commissioner to apply the provisions of the Mines and Minerals Proclamation to the Bakwena Reserve;
(*b*) that the British South Africa Company intends undertaking active prospecting operations in the Reserve almost immediately; and
(*c*) that the commencing date of the period of five years within which the Company shall select its mining area of ten miles square in terms of its Mineral Concession, as modified by the Secretary of State, shall be the date on which the Proclamation is applied to the Reserve as mentioned in (*a*).

The Chief has made no comment upon this communication.

2. The High Commissioner has accordingly directed the issue of the Notice of which a copy is enclosed, and which will appear in the "Gazette" of the 21st instant.

I am, &c.,
SHIRLEY EALES,
Acting Imperial Secretary.

Sir Drummond Chaplin, G.B.E., K.C.M.G.

10141/158.

No. 54.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 14th November, 1932.)

(Bechuanaland Protectorate.)
(Confidential.)
(No. 638.)

High Commissioner's Office, Pretoria, 26th October, 1932.

SIR,

WITH reference to my despatch Confidential No. 525 of the 6th September,* I have the honour to transmit herewith a copy of a letter which has been received from Sir Drummond Chaplin, in reply to the letter from this Office of the 3rd September† regarding the question of the application of the Mines and Minerals Proclamation, 1932, to certain areas of the Bechuanaland Protectorate. I also enclose a copy of a despatch which I have addressed to the Resident Commissioner at Mafeking.

2. I will communicate with you further after the receipt of the Resident Commissioner's reply and after consultation with my Legal Adviser.

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure 1 in No. 54.

THE RHODESIA CHARTERED AGENCY LIMITED.

Northern Assurance Co.'s Building,
106 and 110, St. Georges Street,
Cape Town, 18th October, 1932.

DEAR SIR,

I REGRET that I have been unable to reply before this to your letter of the 3rd September, informing me that His Excellency the High Commissioner has under consideration the question of the application of the provisions of the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932, to certain areas of the Protectorate, in addition to the Bamangwato Reserve to which they have already been applied. The various points raised have necessitated some investigation.

With regard to the Tuli and Gaberones Blocks, as these areas are, by arrangement between the British South Africa Company and the Victoria Prospecting Company, Ltd., to be prospected, it would be convenient if the Proclamation were now applied to them.

The position as regards the Bakwena Reserve is the same, provided always that the procedure as regards the notification to be given to the Chief suggested in my letter of 20th September is followed.

With regard to the Bakgatla Reserve, the British South Africa Company, on behalf of the Linchwe Company, wrote to the Dominions Office on the 28th June, 1932, reminding them of the Linchwe Company's request to be allowed exclusive prospecting rights for two years, with a view to establishing a new mining area of 100 square miles instead of their existing area. It is understood that this request was referred by the Dominions Office to the High Commissioner. The British South Africa Company considers that the request is reasonable and might be granted. Under those circumstances it would seem that the Proclamation should not be applied to this Reserve until the question raised on behalf of the Linchwe Company has been settled.

With regard to the Batawana Reserve, it will be remembered that in 1924 the British South Africa Company asked for ratification of the extension of the Concession agreed to by the Chief, Mathibi, until 1929, but that this was refused on the ground that the carrying on of mining operation by concessionaires in Native Reserves was undesirable in the interests of the natives. On the assumption that the proposal to apply the Mining Proclamation to this Reserve is in contemplation of prospecting or mining taking place, it would appear that there is now no reason why an arrangement should not be made such as that to the extension of which the Chief was prepared to agree in 1924. If, however, such an arrangement were now made and the High

* No. 48. † Enclosure 6 in No. 48

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Commissioner decided to apply the provisions of the Proclamation to the Reserve, the Company would become liable for a large annual payment as rental in terms of Section 31 (1) of the Proclamation, and as at present there is little or no demand for any mineral other than gold, it might be impossible for a very considerable time to make proper arrangements for prospecting, during which time the rental would continue to be payable. The Company, therefore, would not be willing at the present time to make such an arrangement unless the High Commissioner were prepared to agree not to apply the Proclamation to the Reserve for a considerable period, in which case the annual liability of the Company would be limited to whatever payment to the Chief were agreed upon. In that event the Company might be able to arrange for a preliminary reconnaissance trip by a geologist through the Reserve, with a view to ascertaining whether there would be any chance of making satisfactory arrangements for prospecting. If, however, the High Commissioner considers it desirable to apply the Mining Proclamation to the Reserve in the immediate future the Company will offer no objection, it being understood that the High Commissioner will agree, first, that before either a Crown Grant is made to another party in respect of the Reserve or any part of it, or the Reserve, or any part of it is thrown open to public prospecting, he will, in recognition of the Company's preferential rights, afford the Company an opportunity of taking up a Crown Grant, and, secondly, that in the event of the Company not exercising its rights to take up a Crown Grant and a Grant being made to another party, or the Reserve or part of it being thrown open to public prospecting, on the expiration of such Grant or on the withdrawal from public prospecting of the area thrown open the Company's preferential rights will revive.

As regards the Ghanzi, Kgalagadi and Chobe magisterial districts, the British South Africa Company, in the exercise of its preferential rights, does not propose to apply for a Crown Grant under Part IV of the Proclamation in respect of any portion of these districts; and it will therefore be competent to the High Commissioner to deal with these districts by way of Crown Grant to other parties or by throwing them open to public prospecting: the Company, however, considers the High Commissioner should agree that the Company's preferential rights should revive in these districts if and when any Crown Grant made to another party expires or public prospecting ceases to be allowed, and that he will give the Company the first right to take up any Crown Grant he may be disposed to make in the future on the expiration of any Crown Grant made to another party or on the withdrawal of the areas or parts of them from public prospecting.

As the Company's views on the proposals generally are invited, I venture to suggest that the present is not a very suitable time for throwing areas *open* to public prospecting even if prospecting for diamonds is prohibited. It may be, of course, that the Administration may have good reasons for throwing areas open to prospecting, but it is perhaps worth considering that there is now practically no demand for minerals other than gold, so that if individual prospectors are encouraged to enter the Protectorate and do not find any gold their position is likely enough to become difficult and prove a source of embarrassment to the Administration by increasing rather than diminishing unemployment. Secondly, it is, I think, generally agreed that the discovery of diamonds and their exploitation by people not possessed of ample financial resources would not be desirable, and though it may be intended (as indicated in your letter) to prohibit prospecting for diamonds, it is by no means impossible that if areas are thrown open people prospecting for other minerals may come across indications of the existence of diamonds, in which case demands would, no doubt, be made for the prospecting and working of diamonds, which it might be difficult for the Administration to resist. It is reasonable to suppose that if and when world conditions improve the demand for minerals of all kinds will revive, and in that case applications for Crown Grants will probably be forthcoming, or failing such applications prospecting by the public will have a better chance of success than it would have at present, while so far as diamonds are concerned, it is within my knowledge that the Directors of De Beers Consolidated Mines would like to have the matter postponed until they have had an opportunity of discussing with their Chairman and Consulting Engineer, on their return from England towards the end of the year, the possibility of applying for a Crown Grant.

Yours, &c.,
DRUMMOND CHAPLIN.

The Imperial Secretary, High Commissioner's Office,
Pretoria.

Enclosure 2 in No. 54.

(Bechuanaland Protectorate.)
(No. 2104.)

High Commissioner's Office, Pretoria, 26th October, 1932.

Sir,

With reference to my despatch No. 1746 of the 3rd September, I have the honour to transmit herewith a copy of a letter which has been received from Sir Drummond Chaplin regarding the question of the application of the Mines and Minerals Proclamation, 1932, in terms of Section 6 (1) thereof, to certain areas of the Bechuanaland Protectorate, in addition to the Bamangwato Reserve.

2. The Bakwena Reserve, to which reference is made in paragraph 3 of the enclosed letter, has recently been specified by High Commissioner's Notice No. 159 of 1932 as an area to which the Proclamation applies—see my despatch No. 2057 of the 19th instant.

3. You will observe that, as the Tuli and Gaberones Blocks are to be prospected by arrangement between the British South Africa Company and the Victoria Prospecting Company, Limited, the Chartered Company desires the Proclamation to be applied to those areas, and that in the case of the Ghanzi, Kgalagadi and Chobe districts the Company, in the exercise if its preferential rights, does not propose to apply for a Crown Grant under Part IV of the Proclamation in respect of any portion of these districts. I shall be obliged if you will submit a Draft Notice for publication in the "Gazette," applying the Proclamation to the above-mentioned European Blocks and magisterial districts, and I shall be glad also to be furnished with an expression of your views upon the proposal in the sixth paragraph of Sir Drummond Chaplin's letter that it should be agreed that the Company's preferential rights should revive in these districts over any areas in respect of which a Crown Grant made to another party may have expired or public prospecting may have ceased to be allowed. It would, of course, be necessary to consult the Secretary of State before any undertaking in this sense could be given to the Company

4. As regards the observations in the seventh paragraph of his letter, I incline to the view that, while present financial conditions are not such as to encourage persons to apply for Crown Grants involving the obligations which would ordinarily be attached to the grant of an exclusive right to prospect and mine in any area, there would not seem to be any very weighty reason why individual prospectors should not be allowed, if they so desire, to conduct prospecting operations for minerals other than diamonds in the three magisterial districts in question under the provisions of the law. It is true that it is not the intention at present to permit prospecting for, or the winning of, diamonds, but I do not think that prospecting by individuals for other minerals need be prohibited merely because diamonds might be discovered in the course of such prospecting. As regards the application of De Beers Consolidated Mines, Limited, for a Crown Grant in respect of diamonds, I may refer to my despatch No. 1453 of the 29th July. No further communication has yet been received from De Beers.

5. As regards the observations in the fourth paragraph of the enclosed letter, it would hardly appear necessary to postpone the application of the Proclamation to the Bakgatla Reserve until the conclusion of the contemplated negotiations on behalf of the Linchwe Company for the grant of a new mineral concession. In the event of such a concession being granted, the conduct by the Company of prospecting operations in that Reserve would not presumably be attended by any exceptional difficulty, and there would not therefore seem to be any reason why the Company, upon the acquisition of a concession, should not be required to pay the rental imposed on the holder of a mineral concession in terms of Section 31 of the Proclamation.

6. The position in respect of the Batawana Reserve differs from that of the other Reserves owing to its remoteness and the nature of a considerable portion of the country, and under present conditions any prospecting operations there on an extensive scale would probably be difficult to arrange and costly to carry out. I should be glad to have your views on the observations in the fifth paragraph of Sir Drummond Chaplin's letter. I presume that if, for the reasons stated by him, the Company should not desire to obtain a concession in the Batawana Reserve in the event of the Proclamation being applied there, it would nevertheless be open to the Company, if it should so desire, to ask for a Crown Grant under Section 35 of the Proclamation. The written consent of

the "owner," *i.e.*, the Chief of the tribe, would of course be necessary before any such Grant could be made, and the terms and conditions thereof would be a matter for negotiation.

I have, &c.,
H. J. Stanley,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

10141/160.

No. 55.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 16th January, 1933.)

(South Africa.)
(Bechuanaland Protectorate.)
(No. 743.)

High Commissioner's Office,
Cape Town, 29th December, 1932.

Sir,

With reference to my despatch No. 637 of the 26th October,* I have the honour to enclose, for your information, a copy of the documents on the subject of the mineral rights of the British South Africa Company in the Bakwena Reserve, Bechuanaland Protectorate.

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure 1 in No. 55.

The Rhodesia Chartered Agency Limited.

Northern Assurance Co.'s Buildings,
106 and 110, St. George's Street,
Cape Town, 20th December, 1932.

Dear Mr. Eales,

With reference to our conversation this morning on the subject of the Bakwena Reserve, the position is that the concessionary right possessed by the British South Africa Company is limited to the right to prospect the whole Reserve for five years and within that time to select 100 square miles within which we should have the sole right to peg claims and work precious stones and precious metals.

The British South Africa Company has passed on to the Victoria Prospecting Company the right to select the 100 square miles area and to peg claims therein for precious metals and to work for their own benefit, subject to royalty payable to the British South Africa Company, any precious metals from the claims so pegged.

The British South Africa Company has also recorded for De Beers that they have a preferential right to work diamonds in the selected area in terms of the agreement between De Beers and the British South Africa Company made in 1892.

It follows from this that if the Victoria Prospecting Company, in the course of prospecting in the Reserve, should discover any minerals other than precious metals or diamonds, there is no machinery enabling them to peg claims for and work any such minerals. The question therefore arises whether it would be possible for the British South Africa Company, in view of its preferential right to take any fresh concession which the Chief may be willing to grant, to obtain a fresh concession providing for the pegging of claims for and the working of minerals other than precious metals or diamonds. In that case it would be desirable to provide that the right to prospect and win any such minerals should apply to the whole Reserve and not only to a selected area therein, and if such a concession is agreed upon opportunity might be taken so to amend the existing concession as to give the British South Africa Company the right to prospect and work precious metals and stones in the whole Reserve area.

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* No. 53.

Alternatively, it would seem possible for the Administration to deal with the matter by making, under Section 35, either to the British South Africa Company or to the Victoria Prospecting Company direct, a Crown Grant giving the rights required.

At the present time the British South Africa Company is under obligations to pay rent at the rate of 1s. per square mile in terms of Section 31 (1) of the Mining Proclamation, and it would seem to follow that if the concession is amended in the manner above indicated this would not affect the amount of rent payable.

Yours, &c.,
DRUMMOND CHAPLIN.

S. Eales, Esq.,
Administrative Secretary,
High Commissioner's Office,
Parliament Street, Cape Town.

Enclosure 2 in No. 55.

(No. 2554.) High Commissioner's Office,
Cape Town, 23rd December, 1932.

DEAR SIR DRUMMOND,

I HAVE laid before the High Commissioner your letter of the 20th December with reference to the mineral rights of the British South Africa Company in the Bakwena Reserve.

The proposals put forward in your letter are receiving His Excellency's consideration, in consultation with the Bechuanaland Protectorate Administration, and a further communication will be addressed to you as soon as possible.

Yours, &c.,
SHIRLEY EALES.

Sir Drummond Chaplin, C.B.E., K.C.M.G.

Enclosure 3 in No. 55.

(Bechuanaland Protectorate.)
(No. 2554.) High Commissioner's Office,
Cape Town, 23rd December, 1932.

SIR,

WITH reference to my despatch No. 2057 of the 19th October regarding the application of the provisions of the Mines and Minerals Proclamation to the Bakwena Reserve, I have the honour to transmit herewith, for your consideration, a copy of a letter from Sir Drummond Chaplin relative to the desire of the British South Africa Company that its concessionary rights in the Bakwena Reserve should be extended to include provision for the pegging of claims for, and the working of, minerals other than precious metals or diamonds.

2. You will observe that Sir Drummond states that it would be desirable to provide by means of a new Concession that the Company's right to prospect for and win any such minerals should apply to the whole Reserve and not only to a selected area therein, and that he suggests that the existing concession might be amended so as to give the Company the right to prospect for and work precious metals and stones in the whole of the area of the Reserve.

3. I shall be glad to be furnished with an expression of your views upon the enclosed letter generally, and particularly to learn whether you consider the Company might be informed that the Government would have no objection to negotiations being opened by the Company with the Chief and tribe with a view to the conclusion of an agreement on the lines indicated, subject to such terms and conditions (which would presumably include the payment by the Company to the tribe of some additional consideration) as might be agreed upon between the Company and the tribe. It would of course have to be made clear to the Company that any such agreement would be subject to approval by the Secretary of State. It would seem desirable also that the Chief should be notified by the Administration that, while it has no objection to his negotiating a new agreement, it was not asking him to do so and that he has a free hand in the matter, but that in any event no such agreement would be valid until it had received the approval of the Secretary of State.

I have, &c.,
H. J. STANLEY,
High Commissioner.

His Honour
The Resident Commissioner of the
Bechuanaland Protectorate.

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10141/161.

No. 56.

DESPATCH
from
HIGH COMMISSIONER, SOUTH AFRICA.

(Received 16th January, 1933.)

[*Answered by No. 62.*]

(Bechuanaland Protectorate.)
(Confidential.)
(No. 745.) High Commissioner's Office,
Cape Town, 30th December, 1932.

SIR,

UNDER cover of my Confidential despatch No. 638 of the 26th October* I had the honour to forward a copy of a letter, dated the 18th October, from Sir Drummond Chaplin in which *inter alia* he raised, in connexion with the application of the Bechuanaland Protectorate Mines and Minerals Proclamation No. 33 of 1932 to certain areas of the Protectorate and the proposal to declare certain areas of Crown lands open to public prospecting, the question of the revival of the preferential rights of the British South Africa Company if and when such areas, or parts of them, were withdrawn from public prospecting, or, if a Crown Grant should have been made to another party in respect of such area, on the expiration of such Crown Grant. A similar question has been raised by him in respect of the Batawana Reserve.

2. The steps proposed to be taken in order to give effect to the arrangements contemplated under the Mining Proclamation for mineral development in certain parts of the Protectorate by persons other than the Company, *e.g.*, by throwing open, under Section 6 (3) of the Proclamation, certain areas of Crown land to public prospecting, have illustrated the practical difficulties involved by the continued existence of the Company's preferential rights without any specific limitation of time within which they may be exercised, or any stipulation as to the circumstances in which they might be terminated. In respect of the three magisterial districts, viz., the Ghanzi, Kgalagadi, and Chobe districts, which the Administration desires to declare open to public prospecting, Sir Drummond has intimated in his above-mentioned letter of the 18th October that the Company does not propose, in the exercise of its preferential rights, to apply for a Crown Grant under Part IV of the Mining Proclamation. The relevant paragraph of his letter reads as follows:—

> "As regards the Ghanzi, Kgalagadi, and Chobe magisterial districts, the British South Africa Company, in the exercise of its preferential rights, does not propose to apply for a Crown Grant under Part IV of the Proclamation in respect of any portion of these districts, and it will therefore be competent to the High Commissioner to deal with these districts by way of Crown Grant to other parties or by throwing them open to public prospecting; the Company, however, considers the High Commissioner should agree that the Company's preferential rights should revive in these districts if and when any Crown Grant made to another party expires or public prospecting ceases to be allowed, and that he will give the Company the first right to take up any Crown Grant he may be disposed to make in the future on the expiration of any Crown Grant made to another party or on the withdrawal of the areas or parts of them from public prospecting."

I do not feel that I could recommend to you that the Government should agree, without reservation, that, notwithstanding any decision by the Company, in the exercise of its preferential rights, not to apply for a Crown Grant in respect of any area, its preferential rights should revive and continue indefinitely in respect of such area on the expiration of any Crown Grant made to another party than the Company, or, if the area had been thrown open to public prospecting, on the withdrawal of such area from public prospecting. On the other hand, I should hesitate to support a view that the Company should be required to state immediately, or within a very short period of time, whether it desires to exercise its preferential rights over the immense areas of the Crown lands in the Protectorate, and that failure to exercise such rights immediately should entail their forfeiture. In these circumstances I have thought it

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* No. 54.

advisable to obtain an expression of the views of my Legal Adviser and of the Resident Commissioner in the matter, and I enclose herewith a copy of the following documents:—

(1) Despatch No. 682,21, dated 4th November, from the Resident Commissioner.
(2) Minute, dated 16th November, to my Legal Adviser.
(3) Minute, dated 25th November, from my Legal Adviser.
(4) Letter, dated 2nd December, to Sir Drummond Chaplin.
(5) Despatch No. 2194, dated 2nd December, to the Resident Commissioner.
(6) Minute, dated 2nd December, to my Legal Adviser.
(7) Minute, dated 5th December, from my Legal Adviser.
(8) Despatch No. 2393, dated 6th December, to the Resident Commissioner.
(9) Despatch No. 682/21, dated 10th December, from the Resident Commissioner.

3. The preferential rights of the Company are based primarily on the promises by the Government recorded in Lord Ripon's despatch of the 20th December, 1892,* paragraph 9 IV, of which reads as follows:—

"9. IV. The Government officials in Bechuanaland and the Protectorate to use their best endeavours to induce the Chiefs and people in the Bechuanaland Protectorate to grant to the British South Africa Company concessions of minerals, agricultural lands and town sites, over areas not already made the subject of valid and recognized concessions to others: Provided (1) that the Company seek to obtain these concessions within reasonable time, using due diligence in seeking them and offering reasonable inducements to the Chiefs and people to grant them: Provided (2) that when they are acquired the Company use due diligence in inspecting and prospecting them, and where they seem reasonably capable of development, in offering the lands and town sites for occupation, and in opening up the mineral areas for working: Provided (3) that the Company will reserve free of rent for the Bechuanaland Government such lands in the urban areas as may be required for public buildings, for the dwellings of public servants, for the storing of public property, and for police lines."

And, following upon advice obtained from the Law Officers of the Crown in a Report dated the 2nd June, 1898,† the Company was informed in a letter from the Colonial Office, dated the 26th July, 1898,‡ that—

"Mr. Chamberlain is advised that the promises made by his predecessors implied that the Company should have preferential rights in respect of the acquisition of concessions but not exclusive rights; that is to say that, while the Government was pledged not to recognize future concessions to other parties until the Company should have the option of acquiring them, there was no undertaking that for all time to come no concession would be recognized even if the Company had declined to accept and work such concession.

"Your Directors will no doubt agree with Mr. Chamberlain that the above is a reasonable interpretation of the undertakings contained in Lord Ripon's despatch of 20th December, 1892.

"Mr. Chamberlain is also advised that, though there is no express agreement on the point, it would be in accordance with the spirit of the arrangement that the Company should have the same rights in lands over which there exists no such right in native chiefs as would enable them to grant concessions, either where no such rights ever existed or where such rights have been abandoned by the Chiefs.

"Mr. Chamberlain is further advised that the Company's preferential rights still exist except in so far as they may have been modified by the fact that the administration of the Protectorate is not to be transferred to the Company."

4. You will observe that in the 2nd paragraph of Mr. Duncan's enclosed Minute of the 25th November he has expressed the view that—

"the Government is bound in case a Native Chief proposes to grant a concession of minerals or of agricultural lands or urban sites to recognize a preferential right in the Company to negotiate for a concession, and that similarly in the case of any corresponding right being offered by the Administration over Crown lands it should be offered in the first instance to the Company."

* No. 42 in African (South) No. 441.
† No. 193 in African (South) No. 559.
‡ No. 263 in African (South) No. 559.

And in the 3rd paragraph of that Minute he says:—

"If this correctly expresses the obligations undertaken by the Imperial Government *vis-à-vis* the Company it is difficult to see how any limitation can be placed upon it in respect of minerals or lands, a grant of which is for the time being within the competence of the native Chiefs or the Administration as the case may be. If, for example, a Crown Grant is made by the High Commissioner in terms of the Proclamation to some person other than the Company—the Company having declined to exercise its preferential right to take it up—that grant will continue in force and be valid as against the Company until its termination by effluxion of time or otherwise as may be provided by its terms. But if and when owing to lapse or termination of the grant the land in question is again open to disposal the Company would, in my opinion, be in the same position in regard to it as before the grant was made. The same principle would *mutatis mutandis* apply in the case of concessions by native Chiefs."

5. When writing that Minute Mr. Duncan had before him Captain Clifford's Memorandum of 1924 on the rights of the Company in the Protectorate (see Lord Athlone's Confidential despatch of the 20th June, 1924),* but he had not then seen the text of Lord Ripon's despatch of the 20th December, 1892, and other relevant correspondence. In view of the importance of the question raised by the Company as to the revival of its preferential rights in the circumstances stated, I caused Mr. Duncan to be furnished with a copy of the relevant documents including—

(1) Lord Ripon's above-mentioned despatch of the 20th December, 1892 (Parliamentary Paper C. 7154);
(2) Lord Milner's despatch to the Secretary of State of the 14th December, 1897;†
(3) The letter, dated the 2nd June, 1898,‡ from the Law Officers of the Crown containing their Report upon the rights of the Company;
(4) The letter dated the 26th July, 1898,§ from the Colonial Office to the British South Africa Company.

6. Upon perusal of these documents Mr. Duncan, in his enclosed Minute of the 5th December, drew attention to the following condition in Lord Ripon's despatch which was attached to the undertaking given on behalf of the Imperial Government to the Company, viz.:—

"Provided (1) That the Company seek to obtain these concessions within reasonable time using due diligence in seeking them and offering reasonable inducements to the Chiefs and people to grant them."

Mr. Duncan considers that, unless the Imperial Government has at any time withdrawn that condition, the effect of Lord Ripon's despatch was not to confer upon the Company in perpetuity a privilege such as it now claims, but only that, during a reasonable time and using due diligence, it should have an opportunity, assisted by the Government, of obtaining concessions, &c., and he expresses the opinion that, if this is the correct view of the position, it would seem advisable that steps should be taken to impose a definite limitation on the period during which this privilege can be exercised. He adds that it would seem preferable that this limitation should be expressed as a definite term of years, affecting the whole territory, rather than that it should be applied indefinitely and piecemeal, as and when a concession of Crown Grant has been taken up by some other persons after having been offered to and refused by the Company.

7. As regards the observations in the 1st paragraph of Mr. Duncan's enclosed Minute of the 5th December upon the point whether the above-mentioned condition was ever communicated to the Company, my Office has not been able to trace among the records here any particular communication to the Company drawing specific attention to the condition (though such communication may possibly have escaped attention), but there can be no doubt that the Company was aware of the condition, and in this context I may observe that the following paragraph occurs in the Company's letter to the Colonial Office of the 6th September, 1898,‖ which replied to the Colonial Office letter of the 26th July, 1898, mentioned in paragraph 3 above, viz.:—

"6. The Board of Directors fully recognizes the obligations upon the Company under Sub-section 4 of Clause 9 of Lord Ripon's despatch of 20th

* No. 39 in Dominions (South African) No. 2. † No. 2 in Dominions African (South) No. 559.
‡ No. 193 in Dominions African (South) No. 559. § No. 263 in Dominions African (South) No. 559.
‖ No. 344 in African (South) No. 559.

December, 1892 (Provisos 2 and 3), and trusts that the Secretary of State will instruct His Excellency the High Commissioner to give now full effect to the undertaking of the Government under this Sub-section 4 of Clause 9."

It is curious that Provisos (2) and (3) were specifically mentioned by the Company in this paragraph but not Proviso (1).

8. I agree with the view expressed by Mr. Duncan that it would be advisable that steps should be taken to impose a definite limitation on the period during which the Company's preferential rights can be exercised, and you will observe that the Resident Commissioner is strongly averse from any avoidable prolongation of the Company's preferential rights. I sympathize with his desire to secure the elimination of their hampering effect, but I think it would not be fair to overlook that the policy of His Majesty's Government with regard to the development of the Territory, the long delay in the issue of a mining law, and other circumstances beyond the Company's control, have hitherto made it difficult, if not impossible, for the Company to exercise its preferential rights as promptly as might otherwise have reasonably been expected. I am doubtful therefore whether, so far as the preferential mineral rights are concerned, their limitation could equitably be expressed as a definite term of months or years affecting the whole Territory, i.e., Native Reserves and Crown lands, and on this point I have to offer the following observations.

9. In the Report, dated the 2nd June, 1898, the Law Officers of the Crown expressed the nature of the rights of the Company to be as follows:—

"(1) The Government bound itself in express terms to help the Company to get concessions of minerals, agricultural lands and town sites in the Protectorate on certain conditions (C. 7154, p. 29, Art. IV) and the intention that the Company should have preferential rights in respect of such concessions is necessarily implied, as it would be inconsistent with this engagement that the Government recognize such concessions to other persons until the Company had had the option.

But we do not think that the Company's rights were meant to be exclusive. The Company invokes Article VI on page 30 of C. 7154, but this appears to us to be only a direction to Sir Henry Loch as to how he was to deal with the concessions already granted, which were to be investigated under Article V in cases where they had been granted since the date of the Charter. We do not think that it amounts to an undertaking that for all time to come no concessions to other persons would be recognized even if the Company had declined to accept and work such concessions. We think that the Company are entitled to the preference, but if they decline, the Government may, particularly in cases of public utility, properly recognize concessions to others.

"(2) These preferential rights still exist, except in so far as they have been modified by the fact that administration is *not* to be granted to the Company. This circumstance makes it, we think, eminently reasonable that the Government should reserve to itself the right of taking land for Government purposes in all cases, and should impose the payment of a fair contribution out of the profits toward the expenses of the administration of the country on which the prosperity of every such enterprise must depend.

"(3) We think that though there is no express agreement on the point, it may be collected from these despatches that it was intended that the Company should have the same rights in lands over which there exist no such rights in native chiefs as would enable them to grant concessions, and this both (*a*) where no such rights ever existed, and (*b*) where such rights were abandoned by the chiefs to the Secretary of State on 6th November, 1895.

"This may, we think, be inferred from Sir H. Loch's statement on 19th August, 1892, that the land and rights under the High Commissioner's administrative control were in the meanwhile conserved for the Company.

"It must be admitted that the despatches are on this point very vague, and stop short of any legal agreement, but looking to the spirit of the arrangement we think that it may fairly be conceded to the Company subject to such reasonable conditions as are indicated by Sir A. Milner.

"(4) We think that, if as a matter of policy it is deemed expedient to put the arrangement on a more definte footing than that presented by the somewhat vague terms of the despatches, the claim of the Company should be recognized only subject to the three conditions mentioned in Sir A. Milner's despatch, viz., that the right of the Company is preferential, not exclusive, that the Government may take any land required for Government purposes, and that a fair contribution should be made to the expenses of administration."

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10. For the purpose of my present observations the preferential rights of the Company may perhaps be regarded as falling within one or other of the following categories, viz.:—

I. *Mineral Rights in*—

A. *Native Reserves*—
- (i) Where concessions are at present held by the Company;
- (ii) Where no concessions are at present held by the Company or by any person other than the Company;
- (iii) Where concessions are at present held by persons other than the Company.

B. *Crown Lands*—
- (i) Where Crown lands have been or may in the future be made the subject of a Crown Grant to the Company;
- (ii) Where Crown lands have been or may in the future be thrown open to public prospecting;
- (iii) Where Crown lands have not been or may not in the future be thrown open to public prospecting or made the subject of a Crown Grant to a person other than the Company;
- (iv) Where Crown lands have been or may in the future be made the subject of a Crown Grant to persons other than the Company.

II. *Land Rights in*—
- A. *Native Reserves.*
- B. *Crown Lands.*

I. *Mineral Rights.*

A. *Native Reserves.*

11. As regards (i), I think that where the Company is at present the holder of rights to minerals by virtue of a concession granted by the tribe and approved by the Secretary of State the preferential rights of the Company might be deemed to have been exercised and *ipso facto* determined. In cases where the existing concessionary rights of the Company are limited to certain classes of minerals, *e.g.*, precious metals but not base metals, their preferential rights in respect of other classes of minerals might be considered in the light of any decision which may be reached upon the point raised in the next paragraph of this despatch.

12. As regards (ii), it is not easy to suggest what would be a reasonable arrangement in respect of the Company's preferential rights over Native Reserves where no concession is at present held by the Company or by any person other than the Company. It might for instance be contended by the Company—and in fact such contention is in effect put forward in the fifth paragraph of Sir Drummond Chaplin's letter of the 18th October* in respect of the Batawana Reserve—that it would be unreasonable to expect the Company to pay the rental of 1s. per square mile prescribed by Section 31 of the Mines and Minerals Proclamation in respect of such a large area (much of it swamp) as the Batawana Reserve, where under present conditions prospecting operations, if not impracticable, could only be undertaken at great expense. Yet if the Company were to be required, under penalty of losing its preferential rights, to obtain a concession over the Reserve, such rent would become payable in addition to any consideration which might be payable to the tribe. I believe that the Batawana Reserve is the only area in which these difficult considerations arise, and I am disposed to take the view that, so far as this Reserve is concerned, the *status quo ante* might be maintained, unless and until other conditions supervene or some person other than the Company applies for a concession or a Crown Grant over the Reserve or any part of it, when the question of the continuance of the Company's preferential rights, in the event of the Company then deciding not to exercise them, could be further considered. In the meanwhile, however, there would appear to be no reason why the Proclamation should not be applied to the Reserve under Section 6 (1); its application would not appear to interfere in any way with the Company's preferential rights, nor would such application impose any liability on the Company in the absence of any concession.

13. As regards (iii), I presume that, bearing in mind the wording of paragraph 9, IV of Lord Ripon's despatch of the 20th December, 1892, the Company could not establish a claim to preferential rights over areas which at that time were already the subject of valid and recognized concessions to others, if and when such concessions expire.

* Enclosure 1 in No. 54.

B. *Crown Lands.*

14. As regards (i), under this head, I think that in the case of any area of Crown land over which the Company may be given a Crown Grant of minerals its preferential rights might be deemed to have been exercised and *ipso facto* determined.

15. As regards (ii), Sir Drummond Chaplin has intimated that the Company does not at present propose, in the exercise of its preferential rights, to apply for a Crown Grant in respect of any portion of the three magisterial districts of Ghanzi, Kgalagadi, and Chobe, which the Administration has recommended should be thrown open to public prospecting, but he has asked that its preferential rights should revive in the event of those districts or any part of them being withdrawn from public prospecting. I suggest that the Company might be informed that this request cannot be agreed to, but that if the Company should desire within a reasonable period of time, say two years, to apply for a Crown Grant over any portion of Crown lands which has been declared open to public prospecting, and in which claims have not been pegged by other persons, the Administration will be prepared to consider such application for a Crown Grant, and, in the event of acceptable terms being agreed upon, to withdraw such portion of Crown land from public prospecting; but that if no such application for a Crown Grant should be made by the Company within the prescribed period of two years (if two years should be thought to be a reasonable period of time) the preferential rights of the Company over all such areas as have been thrown open to public prospecting will be treated as having been determined.

16. As regards (iii), I suggest that the Company might be given a similar reasonable period of time within which, in the exercise of its preferential rights, to apply for a Crown Grant over any Crown lands which have not been thrown open to public prospecting or made the subject of a Crown Grant, and that on the expiration of that period of time its preferential rights should be deemed to have been determined.

17. As regards (iv), unless the Company could be given a reasonable period of time within which to exercise its preferential rights before a Crown Grant of minerals is made to a person other than the Company—and this hardly seems practicable unless no such Crown Grants to other persons are to be made in the near future—it would appear to be only fair that the Company should be afforded an opportunity of exercising them, if it wishes to do so, on the expiration of any such Crown Grant. I think therefore that if the Company's preferential rights over any area which becomes the subject of a Crown Grant to a person other than the Company have not already been determined in one or other of the ways indicated above, it would be reasonable to agree that the Company's preferential rights should, on the expiration of such Crown Grant to a person other than the Company, be revived for a reasonable period; and if they are not exercised within that period they should then be deemed to have been determined.

18. I should be obliged if the whole matter, at any rate in so far as mineral rights are concerned, could receive early consideration, and if I could be furnished with an expression of your views. Under present conditions, the Administration is seriously hampered in any efforts it may make to encourage mineral development, and it seems to me highly desirable that an agreement with the Company should, if possible, be reached, which while it would afford them reasonable opportunity for exercising their preferential rights in respect of minerals, would at the same time provide for the termination of those rights within such period of time as might be thought reasonable.

II. *Land Rights.*

19. As indicated in paragraph 10 of this despatch, the Company's preferential rights in respect of land require to be considered under two heads, viz., A. *Native Reserves*, which would presumably include the Baralong farms and any Crown lands which have been or may hereafter be allocated for the use and occupation of natives, and B. *Crown Lands*.

20. As regards A. *Native Reserves*, no alienation of surface rights in any land now reserved, or which may hereafter be set apart, for the use and occupation of natives, could presumably be contemplated, and no question of land rights by the British South Africa Company in respect of areas in native occupation would appear to be likely to arise. It has already been ruled (see the late Lord Harcourt's Confidential despatch of the 24th November, 1913*) that the preferential rights of the Company must be held to be good only against other white applicants for land and not against the natives of the Protectorate.

* No. 36 in African No. 1003.

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21. As regards B. *Crown Lands*, the question of the Company's preferential rights would not appear to be a matter which calls for immediate settlement, but if negotiations with the Company with a view to the determination of their preferential rights in respect of minerals are to be proceeded with, and this I think is necessary, it might be considered whether a settlement in respect of their preferential rights over the surface of the Crown lands could not also be reached. As a possible basis of settlement, the Crown might perhaps agree to give the Company a period of five years within which to submit any proposals which it might wish to make, in the exercise of its preferential rights, in respect of the surface of Crown lands, any preferential rights not so exercised within that period being thereupon determined. During that period the Crown would presumably have to undertake not to alienate any such land rights unless the Company had first been afforded an opportunity of exercising its preferential rights in respect thereof.

22. The above suggestions which I have the honour to submit for consideration are of course based on the assumption that Mr. Duncan is correct in his view (see paragraph 6 of this despatch) that the effect of Lord Ripon's despatch of the 20th December, 1892, was not to confer upon the Company preferential rights in perpetuity.

I have, &c.,
H. J. STANLEY.
High Commissioner

Enclosure 1 in No. 56.

Resident Commissioner's Office,
Mafeking, C.P., 4th November, 1932.

SIR,

I HAVE the honour to acknowledge the receipt of Your Excellency's despatch No. 2104 of the 26th October, transmitting a copy of a letter from Sir Drummond Chaplin regarding the question of the application of the Mines and Minerals Proclamation, 1932, in terms of Section 6 () thereof, to certain areas of the Bechuanaland Protectorate, in addition to the Bamangwato Reserve.

2. I note that the British South Africa Company desire the Proclamation to be applied to the Tuli and Gaberones Blocks, and I submit a draft Notice as requested by Your Excellency applying the Proclamation to those areas and the Magisterial Districts of Ghanzi, Kgalagadi, and Chobe, together with draft Notices declaring these areas to be Mining Districts and appointing the Magistrates concerned Acting Mining Commissioners.

3. I also note that the British South Africa Company does not, in the exercise of its preferential rights, propose to apply for a Crown Grant under Part IV of the Proclamation in respect of any portion of the Ghanzi, Kgalagadi, and Chobe Districts. I cannot agree with the suggestion put forward by Sir Drummond Chaplin in the sixth paragraph of his letter that the Company's preferential rights should revive in the districts referred to when a Crown Grant made to another party may have expired, or to public prospecting may have ceased to be allowed. The Company has its opportunity now which it does not desire to take, but apparently wishes at some future date to re-establish their preferential rights which are so embarrassing and so inimical to the Protectorate's welfare to-day. I desire to protest in most emphatic terms against this suggestion, which I regard as unreasonable and likely to be prejudicial to the interests of the Territory.

of his letter, I agree with the views expressed in the fourth paragraph of Your Excellency's despatch under reply, and I dissent strongly from those of Sir Drummond Chaplin.

I see no valid reason against, but many reasons for, the encouragement both of public prospecting and the making of Crown Grants generally.

As regards Crown Grants, indeed if applications for such grants are received from approved persons I do not see the slightest objection to the applications being granted. There is in fact, as Your Excellency is aware, an application for a Crown Grant in the Kgalagadi District in existence, and provided the applicants prove their financial status I intend to recommend to Your Excellency that a Crown Grant be made to the people referred to subject of course to a satisfactory agreement being arrived at.

5. The objects of the British South Africa Company would appear to be rather the preserving of monopolistic privileges for themselves and the prevention of prospecting by others than the development of the Protectorate, and I feel strongly that the views expressed in this particular paragraph 7 should receive no encouragement.

6. As regards the observations in the fourth paragraph of Sir Drummond Chaplin's letter, it would appear that the original Concession of 1898 is still in existence although a new agreement was contemplated in 1923 which agreement was not sanctioned by the Secretary of State. The fact remains, however, that the sum of £100 a year is still being paid by the grantees of the original Concession to the Chief of the Bakgatla Tribe, who apparently considers that this Concession is still in existence. If therefore the Proclamation is applied to the Bakgatla Reserve at once, the grantees of the original Concession would, I presume, be liable for payment of rental in terms of Section 31 in respect of the area affected by the 1898 Concession, and I see no reason whatever why they should be excused from doing so.

7. I have no objection to the British South Africa Company negotiating a new Concession with the Batawana Tribe if it desires to do so, but I cannot agree with the suggestions put forward by Sir Drummond Chaplin that the Proclamation should not be applied to that Reserve for a considerable period; this would in effect amount to tying up that part of the Territory for many years and in fact would result in the present-day inactivity caused by the British South Africa Company's preferential rights which must be avoided. It is not claimed that at the moment there are any other aspirants for mining honours in that part of the Territory, but it is highly desirable that if any applications for Concessions, &c., are received from other parties the Government should be free to negotiate at once without having to undergo the vexatious delay invariably caused by having in the first place to consult the British South Africa Company.

8. I would therefore urge that the Proclamation should be applied to that Reserve; in such circumstances it would be open to the British South Africa Company to apply for a Crown Grant if they so desired, and if they did not wish to obtain a Concession.

It would, however, be highly undesirable to entertain the second condition suggested by Sir Drummond Chaplin, namely, that in certain events the Company's preferential rights should revive after having lapsed.

The Company can negotiate for a Concession or can apply for a Crown Grant; if they do neither, their privileged position should end there.

I have, &c.,
C. F. Rey,
Resident Commissioner.

His Excellency the High Commissioner,
Pretoria.

Enclosure 2 in No. 56.

PREFERENTIAL RIGHTS OF THE BRITISH SOUTH AFRICA COMPANY IN RESPECT OF MINERALS IN BECHUANALAND PROTECTORATE.

LEGAL ADVISER,

His Excellency has requested me to refer to you for your consideration the matters dealt with in the accompanying letter dated the 18th October from Sir Drummond Chaplin and the Resident Commissioner's despatch of the 4th November.

2. As regards the origin of the Company's preferential rights in the Protectorate, I am to invite attention to the Memorandum (pages 1-10) on the British South Africa Company's rights in the Protectorate drawn up by Captain Clifford in 1924.

3. So far as such preferential rights relate to land it has hitherto been the practice of the Government before granting to other parties any interest in land to consult the Company and ascertain that it had no objection, in other words, the Company has been afforded in the case of land an opportunity of exercising its preferential rights before any rights therein were granted to another party.

4. The question of the British South Africa Company's preferential rights in respect of minerals was discussed with representatives of the Company at the Dominions Office on the 30th November, 1928, when the provisions of the Bechuanaland Protectorate Mines and Minerals Proclamation were under consideration—see the Secretary of State's Confidential despatch of the 13th December, 1928, but as it did not then appear that any mutually acceptable arrangement for the surrender by the Company of its preferential rights could be agreed upon, it was thought better to abandon the

idea of making any arrangement for their commutation, and to proceed with the discussion on the basis of the Draft Mining Proclamation which has since become law. The Company mentioned in this connexion that, though the point did not appear to be specially provided for in the Proclamation, they understood that Crown lands would not be thrown open to public prospecting without the Company being first given the option of taking a Crown Grant in respect of the area concerned.

5. After the Mining Proclamation had been issued, the Company was informed in a letter, dated the 3rd September, to Sir D. Chaplin that the High Commissioner proposed to apply the Proclamation, under Section 6 (1), to certain parts of the Protectorate, including the Crown lands in the Ghanzi, Kgalagadi, and Chobe districts, and that, unless the Company in the exercise of its preferential rights now applied for a Crown Grant, the High Commissioner also proposed to declare, in terms of Section 6 (3) of the Proclamation, those districts to be open for prospecting for minerals, except diamonds, without prejudice however to the consideration by the High Commissioner of any applications which may have been or may hereafter be received from parties other than the Company for the issue of a Crown grant under Section 35 of the Proclamation.

6. Sir D. Chaplin's reply on this point, in respect of the Crown lands referred to, is contained in the sixth paragraph of his letter of the 18th October which reads as follows:—

> "As regards the Ghanzi, Kgalagadi and Chobe magisterial districts, the British South Africa Company, in the exercise of its preferential rights, does not propose to apply for a Crown Grant under Part IV of the Proclamation in respect of any portion of these districts, and it will therefore be competent to the High Commissioner to deal with these districts by way of Crown Grant to other parties or by throwing them open to public prospecting; the Company, however, considers the High Commissioner should agree that the Company's preferential rights should revive in these districts if and when any Crown Grant made to another party expires or public prospecting ceases to be allowed, and that he will give the Company the first right to take up any Crown Grant he may be disposed to make in the future on the expiration of any Crown Grant made to another party or on the withdrawal of the areas or parts of them from public prospecting."

7. Similarly, in his observations in the fifth paragraph of his letter, with regard to the proposed application of the Proclamation, under Section 6 (1), to the Batawana Reserve, he says:—

> "If, however, the High Commissioner considers it desirable to apply the Mining Proclamation to the Reserve in the immediate future the Company will offer no objection, it being understood that the High Commissioner will agree, first, that before either a Crown Grant is made to another party in respect of the Reserve or any part of it, or the Reserve or any part of it is thrown open to public prospecting, he will, in recognition of the Company's preferential rights, afford the Company an opportunity of taking up a Crown Grant, and, secondly, that in the event of the Company not exercising its right to take up a Crown Grant and a Grant being made to another party, or the Reserve or part of it being thrown open to public prospecting, on the expiration of such Grant or on the withdrawal from public prospecting of the area thrown open the Company's preferential rights will revive."

The first of these two conditions would appear to be unexceptional, but the second condition, as to a subsequent revival of the Company's preferential rights, would not appear to be acceptable *in toto*. I revert to this point in paragraph 10 *infra*.

8. As regards the Crown lands in the three magisterial districts, it seems doubtful whether the High Commissioner should recommend to the Secretary of State that the Government should agree, without reservation, that, notwithstanding any decision by the Company in the exercise of its preferential rights, either to take, or not to apply for, a Crown Grant in respect of any area, its preferential rights should revive and continue indefinitely—no limit of time is suggested by the Company—in respect of such area on the expiration of any Crown Grant made to another party than the Company, or, if the area had been thrown open to public prospecting, on the withdrawal of such area from public prospecting. On the other hand, the High Commissioner would feel some hesitation in supporting without qualification a view that the Company should be required to state forthwith, and finally, whether it desires to exercise its preferential rights over the immense areas of the Crown lands in the Protectorate, and that failure to exercise such rights immediately should entail the forfeiture of such rights.

9. On the whole, His Excellency is inclined, notwithstanding the observations of the Resident Commissioner, but subject to the consideration of your opinion, to put forward for consideration by the Secretary of State a suggestion that if any area of Crown land is made the subject of a Crown Grant to another party or thrown open to public prospecting, the Company's preferential rights in respect of such area should, on the expiration of any such Crown Grant, or in the event of the withdrawal of any such area from public prospecting, be revived for such limited period (say two years) as might be considered reasonable, but that if at the end of such period the Company had not applied for a Crown Grant in respect of such area, then its preferential rights thereover should finally lapse.

10. So far as the Batawana Reserve is concerned, the mere application of the Proclamation to the Reserve would not deprive the Company of any of its preferential rights, and those rights would not appear to be affected consequentially unless (1) a definite proposal for the grant of a concession or the issue of a Crown Grant to some party other than the British South Africa Company, in respect of the whole or any part of the Reserve were under consideration, or (2) the High Commissioner, with the concurrence of the Chief and tribe, should propose to declare the Reserve, or any portion of it, open to public prospecting. In the former event, the Company would presumably have to be afforded an opportunity of exercising its preferential rights, but there would not appear to be any reason why, if the Company decided not to exercise them, they should not be deemed to have lapsed; in the latter (very unlikely) event, it might perhaps be reasonable to agree to a conditional revival of the Company's preferential rights on the lines suggested in paragraph 9 *supra* in respect of the Crown lands.

11. His Excellency would be glad to have the benefit of your observations on the matter generally, and to learn whether you have any comments or suggestions to make upon the enclosed draft letter to Sir D. Chaplin.

SHIRLEY EALES.

16th November, 1932.

Enclosure 3 in No. 56.

IMPERIAL SECRETARY, Johannesburg, 25th November, 1932.

BECHUANALAND PROTECTORATE—PREFERENTIAL RIGHTS OF BRITISH SOUTH AFRICA COMPANY.

1. THE only paper before me bearing on the claim of the British South Africa Company to preferential rights in respect of the grant of concessions by native chiefs or the grant by the Government of rights over Crown lands is the memorandum by Captain Clifford enclosed with Lord Athlone's despatch to the Secretary of State of 20th June, 1924. From that memorandum it appears that the claim for these preferential rights is based on a despatch of the Secretary of State of 20th December, 1892. The relevant passage is summarized by Captain Clifford as follows:—" The Government agreed to use its influence with the Chiefs to induce them to grant to the Company various concessions of minerals and agricultural or urban lands " subject to certain conditions. On page 6 of the memorandum it is stated that in consequence of a despatch of Lord Milner, dated 14th December, 1897, the whole question was investigated and the Law Officers of the Crown gave their interpretation of the rights of the Company. Their interpretation according to the memorandum was that the British Government did in express terms bind itself to assist the Company in its efforts to secure concessions of minerals, agricultural lands, and town sites in the Protectorate and that in consequence of this pledge the Company had a preferential but not exclusive right to all concessions granted after the Charter. They went further and held that, although there was no express agreement on the point, it was intended that the Company should have the same rights in lands over which there exists no such rights in native Chiefs as would enable them to grant concessions and this both (*a*) where no such rights ever existed, and (*b*) where such rights were abandoned by the Chiefs to the Secretary of State on 4th November, 1895.

2. If this opinion of the Law Officers is based solely on the passage in Lord Ripon's despatch of 20th December, 1892, referred to above, it seems to me a very generous interpretation of the obligation of the Imperial Government as stated therein. I assume, however, that it was then, and has since been, accepted by the Colonial Office as a correct interpretation of the obligation undertaken by the Imperial Government to the British South Africa Company. The effect is that the Government is

bound in case a native Chief proposes to grant a concession of minerals or of agricultural lands or urban sites to recognise a preferential right in the Company to negotiate for the concession, and that similarly in the case of any corresponding right being offered by the Administration over Crown lands it should be offered in the first instance to the Company.

3. If this correctly expresses the obligations undertaken by the Imperial Government *vis-à-vis* the Company it is difficult to see how any limitation can be placed upon it in respect of minerals or lands a grant of which is for the time being within the competence of the native Chiefs or the Administration as the case may be. If, for example, a Crown Grant is made by the High Commissioner in terms of the Proclamation to some person other than the Company—the Company having declined to exercise its preferential right to take it up—that grant will continue in force and be valid as against the Company until its termination by effluxion of time or otherwise as may be provided by its terms. But if and when owing to lapse or termination of the grant the land in question is again open to disposal, the Company would, in my opinion, be in the same position in regard to it as before the grant was made. The same principle would *mutatis mutandis* apply in the case of concessions by native Chiefs.

4. A question may be raised, however, whether such an obligation can reasonably be regarded as binding in perpetuity, or whether, from the terms of the contract out of which it arose, an implication can be inferred that it was intended to endure for a limited period only. The agreement in question is not before me, and I can only say that, in the absence of express terms or necessary implication to the contrary, ordinary rules of construction would be against the creation of a preferential right of this sort in perpetuity. It has been in existence now for 40 years, and it might reasonably be supposed that the Company has had ample opportunity of making use of its preferential rights to secure any concession or grant which it could reasonably have expected to acquire under its agreement. On the other hand, it may be contended that the Proclamation has for the first time laid down provisions for the opening of the Territory for discovery and working of its mineral resources, and that, until such legislation was promulgated, the Company did not have a proper opportunity of exercising its preferential rights. It seems to me that there is substance in this contention, and that, if it should be decided in the interests of the Protectorate to terminate these preferential rights of the Company, a reasonable interval should be allowed from the commencement of the Proclamation.

5. The interpretation of the Company's preferential rights above referred to would, in my opinion, be sufficiently wide to include a right on the part of the Company to be offered an opportunity of taking a Crown Grant over any Crown land (or portion it) which the High Commissioner proposed to throw open for prospecting.

6. I agree with the opinion expressed in Section 10 of your minute in regard to the application of the Proclamation to the Batawana reserve subject to any decision which may have been taken as to the termination of the preferential rights. The Company will not be prejudiced by the provision being applied.

7. I approve the terms of the draft letter to Sir D. Chaplin subject to a suggested amendment which I have indicated in pencil in paragraph 4.

PATRICK DUNCAN.

Enclosure 4 in No. 56.

(No. 2194.)

SIR, High Commissioner's Office, Pretoria, 2nd December, 1932.

I AM directed to inform you that the High Commissioner has had under consideration your letter of the 18th October with reference to the proposed application of the provisions of the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932, to certain areas of the Protectorate.

2. His Excellency notes that by arrangement between the British South Africa Company and the Victoria Prospecting Company, Limited, the Tuli and Gaberones Blocks are to be prospected. A Notice applying the Proclamation, under Section 6 (1), to these areas will shortly be published in the *Gazette*.

3. The High Commissioner has decided also to apply the Proclamation, under Section 6 (1), to the magisterial districts of Ghanzi, Kgalagadi, and Chobe. His Excellency has noted from the sixth paragraph of your letter that, while the British South Africa Company does not propose, in the exercise of its preferential rights, to apply for a Crown Grant in respect of any portion of these districts under Part IV of the Proclamation, the Company considers that its preferential rights should revive

in these districts when any Crown Grant made to another party expires, or, if the areas are thrown open to public prospecting, when public prospecting ceases to be allowed, and that the Company should be given the first right to take up any Crown Grant which the High Commissioner might be disposed to make in the future on the expiration of any grant to another party, or on the withdrawal of the areas, or parts of them, from public prospecting. His Excellency is consulting the Secretary of State, and a further communication on this point will be addressed to you as soon as possible. You will appreciate that in the meanwhile His Excellency is not in a position to indicate what the eventual decision thereon is likely to be.

4. As regards the Bakgatla Reserve, referred to in the fourth paragraph of your letter, I am to state that it does not appear to the High Commissioner that the application of the Proclamation to that Reserve would prejudice the Company in regard to any negotiations which the Company may undertake with the Chief and tribe with a view to the grant of a new concession, and in these circumstances there does not appear to His Excellency to be any valid reason why the Proclamation should not be applied to that Reserve forthwith. Unless therefore the Company has any further observations to offer, His Excellency now proposes to apply the Proclamation accordingly.

5. With reference to the observations in the fifth paragraph of your letter in regard to the Batawana Reserve, I am to point out that the mere application of the Proclamation to the Reserve, under Section 6 (1), would not deprive the Company of any of its preferential rights, and it is not clear to the High Commissioner, therefore, why he should be asked to agree, as a condition precedent to the application of the Proclamation to the Reserve, to such stipulations as are specified in the fifth paragraph of your letter. This need not, however, preclude subsequent consideration of what arrangements, if any, might be concerted to secure to the Company reasonable facilities for the exercise of its preferential rights in certain eventualities, but before the High Commissioner can deal further with this aspect of the matter, it will be necessary for him to consult the Secretary of State.

6. The question of the application of the Proclamation to the Bakwena Reserve, referred to in the second paragraph of your letter, has already been dealt with separately, and His Excellency has taken note of the view expressed in the last paragraph of your letter with reference to the general question of throwing open certain parts of the Protectorate to public prospecting.

I am, &c.,
SHIRLEY EALES,
Administrative Secretary

Sir Drummond Chaplin, G.B.E., K.C.M.G.

Enclosure 5 in No. 56.

816. High Commissioner's Office, Pretoria, 2nd December, 1932.

WITH reference to your despatch of the 4th November regarding the question of the application of the Mines and Minerals Proclamation 1932, in terms of Section 6 (1) thereof, to certain areas of the Bechuanaland Protectorate, I have the honour to enclose herewith, for your information, a copy of a letter which has been addressed to Sir Drummond Chaplin.

I also enclose copies of Notices which will be published in next week's *Gazette* applying the Proclamation to the Tuli and Gaberones Blocks, and the Ghanzi, Kgalagadi, and Chobe districts, appointing the Tuli and Gaberones Blocks to be Mining Districts under the Proclamation, and appointing the respective Magistrates to be Mining Commissioners. The appointment of the Ghanzi, Kgalagadi, and Chobe districts to be Mining Districts should, I think, be deferred until we are in a position to declare those areas open to public prospecting As you are aware the declaration of any area to be open to public prospecting is affected by the question of the revival of the Britsh South Africa Company's preferential rights in certain eventualities, which is at present engaging my attention in consultation with my Legal Adviser

I have, &c.,
H. J. STANLEY,
High Commissioner

His Honour the Resident Commissioner
of the Bechuanaland Protectorate.

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Enclosure 6 in No. 56.

PREFERENTIAL RIGHTS OF THE BRITISH SOUTH AFRICA COMPANY IN THE BECHUANALAND PROTECTORATE.

LEGAL ADVISER,

THE High Commissioner is much obliged to you for your Minute of the 25th November.

2. In view of the importance of the question which has been raised by the Company as to the revival of its preferential rights in certain eventualities. His Excellency, before communicating with the Secretary of State in the light of your Minute, would be obliged if you would peruse the accompanying file of correspondence which has been extracted from the official records.

3. The correspondence includes:—

(1) An extract from Lord Ripon's despatch, dated the 20th December, 1892, setting forth the promises which were made by the Government when the question of the construction of a railway through the Bechuanaland Protectorate was under consideration. (The full text of the despatch is printed on pages 26-30 of Parliamentary Paper C. 7154).

(2) Lord Milner's despatch, dated the 14th December, 1897, in which he sought an expression of the views of the Secretary of State upon the question of the rights of the British South Africa Company in the Protectorate.

(3) A letter, dated the 2nd June, 1898, from the Law Officers of the Crown containing their Report upon the rights of the Company.

(4) A letter, dated the 26th July, 1898, from the Colonial Office to the British South Africa Company which contains the following passages, the substance of which was given in Captain Clifford's Memorandum, viz.:—

"Mr. Chamberlain is advised that the promises made by his predecessors implied that the Company should have preferential rights in respect of the acquisition of concessions but not exclusive rights; that is to say that, while the Government was pledged not to recognize future concessions to other parties until the Company should have had the option of acquiring them, there was no undertaking that for all time to come no concession would be recognized even if the Company had declined to accept and work such concession.

Your Directors will no doubt agree with Mr. Chamberlain that the above is a reasonable interpretation of the undertakings contained in Lord Ripon's despatch of 20th December, 1892.

Mr. Chamberlain is also advised that, though there is no express agreement on the point, it would be in accordance with the spirit of the arrangement that the Company should have the same rights in lands over which there exists no such right in native chiefs as would enable them to grant concessions, either where no such rights ever existed or where such rights have been abandoned by the Chiefs.

Mr. Chamberlain is further advised that the Company's preferential rights still exist, except in so far as they may have been modified by the fact that the Administration of the Protectorate is not to be transferred to the Company.

I am to observe that the last-mentioned reservation is important, as it renders it necessary that in any arrangement which may be made for the development of the Protectorate the Government should retain the right in all cases of taking whatever land it may require for its own purposes, and should exact a fair contribution from the grantees or occupiers of land or mineral rights in the Protectorate, towards the expenses of administration."

4. The High Commissioner will be grateful if, after consideration of this correspondence, you will kindly advise him whether you desire to amplify in any respect the views expressed in your Minute of the 25th November.

SHIRLEY EALES.

2nd December, 1932.

Enclosure 7 in No. 56.

THE IMPERIAL SECRETARY, Johannesburg, 5th December, 1932.

BECHUANALAND PROTECTORATE—PREFERENTIAL RIGHTS OF THE BRITISH SOUTH AFRICA COMPANY.

IT appears from a perusal of the text of Lord Ripon's despatch to Sir H. B. Loch, of the 20th December, 1892, that the undertaking given on behalf of the Imperial Government to the Company on which the Company's claim to preferential rights is based, was given subject to an important condition in the following words:—

> "Provided: (1) That the Company seek to obtain these concessions within reasonable time using due diligence in seeking them and offering reasonable inducements to the Chiefs and people to grant them."

This condition is not mentioned in Captain Clifford's memorandum, and I cannot find any reference to it in the correspondence between the Colonial Office and the Company which has been referred to me. In the report of the Law Officers, dated the 2nd June, 1898, conveying their opinion as to the interpretation of the undertaking given to the Company, they refer to the conditions under which the Government bound itself to help the Company to get concessions—see paragraph 1 of their report. They do not specify the particular condition to which I have referred and I do not know whether it has ever been communicated to the Company. Unless the Imperial Government has at any time withdrawn that condition it seems to me to be clear that the effect of Lord Ripon's despatch was not to confer upon the Company in perpetuity a privilege such as they now claim, but only that, during a reasonable time and using due diligence, they should have an opportunity, assisted by the Government, of obtaining concessions, &c. If this is a correct view of the position it would seem advisable that steps should be taken to impose a definite limitation on the period during which this privilege can be exercised. It would seem preferable that this limitation should be expressed as a definite term of years, affecting the whole territory, rather than that it should be applied indefinitely and piece-meal, as and when a concession or Crown Grant has been taken up by some other person after having been offered to and refused by the Company. The mere existence of this preferential right is in itself a deterrent to other persons who might desire to negotiate for concessions to Crown Grants.

It is quite clear from a perusal of the correspondence which led up to Lord Ripon's despatch that this particular privilege was sought for by the Company as a temporary privilege, and that the condition which I have quoted above was deliberately inserted by the Government. In Sir Henry Loch's minute to the Colonial Office, No. 19 in C. 7154, he refers to this particular claim of the Company as follows:—

> "The Company's claim to a pre-emptive right to obtain concessions from the Chiefs of land and minerals subsequent to the date of the Charter to be recognized, provided these rights are exercised or sought to be exercised within a period to be arranged between Her Majesty's Government and the Chartered Company with full power for Her Majesty's Government to extend that period should circumstances render that course desirable."

At the end of the minute is a note that Mr. Rhodes read it and accepted the whole of it.

This minute was dealt with in a letter from the Colonial Office to the Treasury, dated the 17th November, 1892, No. 23 in C. 7154 as follows:—

> "What Sir Henry Loch calls the pre-emptive right of the Company to obtain concessions in the Protectorate, by which Lord Ripon understands that a preferential or temporarily exclusive right is intended is only to be recognized for a period fixed with the consent of the Government, and in Lord Ripon's opinion it should be one of the terms of any arrangement that the privilege should be used with diligence and should terminate if not so used."

These extracts, in my opinion, make it clear that it was the intention of the Government to grant this preferential right for a definitely limited period, and then only if it was exercised with due diligence. Although in Lord Ripon's despatch to Sir Henry Loch no definite period is specified, it would seem clear that the condition requiring the Company to seek these concessions within a reasonable time would negative any claim that the grant was intended to be perpetual.

PATRICK DUNCAN.

Enclosure 8 in No. 56.

(No. 2393.)

SIR, High Commissioner's Office, Pretoria, 6th December, 1932.

WITH reference to my despatch No. 2194 of the 2nd December, I have the honour to transmit copies of Minutes exchanged with my Legal Adviser on the subject of the preferential rights of the British South Africa Company in the Bechuanaland Protectorate and with regard to the question, which was raised in Sir Drummond Chaplin's letter of the 18th October (of which a copy was enclosed in my despatch No. 2104 of the 26th October), of the revival of those rights in certain eventualities. I also enclose a copy of the file of correspondence referred to in the enclosed Minute of the 2nd December.

2. You will observe that Mr. Duncan, in his Minute of the 5th December, has suggested that it would be advisable that steps should be taken to impose a definite limitation on the period during which the preferential rights of the Company can be exercised, and I now propose to consult the Secretary of State upon this point. Before doing so, however, I should be glad to know whether you have any further observations to offer in supplementation of the views expressed in your despatch No. 682/21 of the 4th November and in the light of the enclosed Minutes. In this context I should be glad also to have an expression of your views as to what might, in all the circumstances of the case, be regarded as a reasonable period of time within which the Company might be required to exercise its preferential rights.

I have, &c.,
H. J. STANLEY,
High Commissioner.

His Honour the Resident Commissioner
of the Bechuanaland Protectorate.

Enclosure 9 in No. 56.

Resident Commissioner's Office,
Mafeking, 10th December, 1932.

SIR,

I HAVE the honour to acknowledge the receipt of Your Excellency's despatch No. 2194 of the 2nd December transmitting a copy of a letter addressed to Sir Drummond Chaplin regarding the question of the application of the Mines and Minerals Proclamation, 1932, in terms of Section 6 (1) thereof, to certain areas in the Bechuanaland Protectorate and enclosing therewith copies of Notices to be published in the *Gazette* relating to the application of the Proclamation to the Gaberones Block and the Magisterial Districts of Tuli Block, Ghanzi, Kgalagadi and Chobe, the declaration of the Tati and Gaberones Blocks as Mining Districts and the appointment as Mining Commissioners for these two Districts of the respective Magistrates.

2. In order to make the Proclamation effective, that is to say, in order that the proper officers may be available to exercise jurisdiction as and when necessary over those areas to which the Proclamation is applied, the Magisterial Districts of Ghanzi, Kgalagadi and Chobe should be declared Mining Districts and the respective Magistrates appointed Mining Commissioners, at the same time that the Proclamation is applied. There is no reason against this. It would simplify and reduce work and correspondence and it would avoid the possibility of a recurrence of the unfortunate happening in the Bamangwato Reserve when the British South Africa Company were prospecting illegally for a period, owing to there being no one legally established to issue the Prospecting Permit.

3. From the letter addressed to Sir Drummond Chaplin referred to in paragraph 1 hereof I note that it is Your Excellency's intention to consult the Secretary of State regarding the question of the revival, in certain circumstances, of the British South Africa Company's preferential rights as suggested by Sir Drummond Chaplin in his letter to the Imperial Secretary of the 18th October, 1932, and that Your Excellency will also consult the Secretary of State regarding the further suggestion of Sir Drummond Chaplin that the application of the Proclamation to the Batawana Reserve should be delayed for a considerable period.

4. Regarding the Bakgatla Reserve I am gratified to learn that Your Excellency agrees that no reason exists for not applying the Proclamation to this area and in this context I have to inform Your Excellency that application has been made to the Registrar

of Deeds for the registration of the Mineral Concession granted in this Reserve to Julius Weil in the year 1898, which Concession was ceded to the Linchwe Concession Company, Limited, but that such registration is presently delayed for consideration by the local Attorneys of the Company of the following matters, viz. :—

(*a*) The removal of the Concession from 1913 and the approval of the Secretary of State thereto.

(*b*) The procuring of the cessions provided for in the Agreements of Sale dated 12th December, 1898, and 25th May, 1908, respectively of a half share from Julius Weil to the British South Africa Company and of the whole from Julius Weil and the British South Africa Company to the Linchwe Concession Company, Limited.

5. With reference to (*a*) the position is that the concession was granted for a period of five years expiring 21st July, 1903, and it was renewed from time to time with the consent of the Secretary of State to 21st July, 1913, but no evidence of any further renewal has been produced. It will be seen, however, from paragraph 6 of my despatch of the 4th November that the payment of £100 per annum provided for in the Concession Agreement is still being made to the Chief, who apparently regards the Concession as still being of force and effect.

6. Since writing the foregoing I have received Your Excellency's despatch No. 2393 of the 6th December affording me an opportunity for the submission of further observations in supplementation of the views expressed in my despatch of the 4th November.

7. I have read carefully the minutes enclosed in Your Excellency's despatches under reply and as a result I desire to re-affirm the views expressed in my despatch of the 4th November, namely, that the proposal that the Company's preferential rights should revive when a Crown Grant is made to another party may have expired or when public prospecting may have ceased to be allowed is one that should in no circumstances be entertained. It is directly opposed to the interests of the Territory, nor does it appear to me after careful perusal of the documents accompanying Your Excellency's despatch that the legal position requires any such procedure.

8. In dealing with this question so far as Crown land is concerned, I would venture to suggest that it is unnecessary to consult the Company before applying the Proclamation to areas in terms of Section 6 (1). This seems to me to be an unnecessary procedure which must make for unnecessary delay and difficulty. In my view the more suitable course, and one which is entirely in accord with the legal necessities of the case, is that the Proclamation should be applied to all areas, including the Batawana Reserve, in terms of Section 6 (1) without reference to the Company. The Company should afterwards be notified that in the exercise of its preferential rights to minerals it is open to them to make any application for the issue of a Crown Grant within a period not exceeding six months, failing which their preferential rights will lapse. To extend this period to two years would, in my view, be wholly inimical to the welfare of the Territory and extending altogether unduly the exceptionally and unwarrantably favourable position which the Company enjoys. It seems to me most unreasonable that a Company which already holds the mineral rights of vast areas in the Protectorate should expect to receive preferential treatment in excess of that which the legal position appears to justify.

I have, &c.,
C. F. Rey,
Resident Commissioner.

His Excellency the High Commissioner, Cape Town.

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20869/4.

No. 57.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 30th January, 1933.)

(Bechuanaland Protectorate.)
(Confidential.)
(No. 34.)

High Commissioner's Office,
Cape Town, 13th January, 1933.

Sir,

With reference to your Confidential telegram No. 95 of the 1st November,* I have the honour to transmit to you, for your information, the accompanying copy of correspondence relative to the desire of the British South Africa Company to obtain a new mineral concession in the Bakgatla Reserve and with regard to the application of the Bechuanaland Protectorate Mines and Minerals Proclamation to the Reserve. I attach also a copy of the Notice which has been issued applying the Proclamation to the Reserve.

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure 1 in No. 57.

(No. 2162.)

High Commissioner's Office, Pretoria, 11th November, 1932.

Sir,

With reference to the fourth paragraph of your letter of the 18th October regarding the Linchwe Company's request to be allowed exclusive prospecting rights for two years in the Bakgatla Reserve, I am directed by the High Commissioner to transmit for your information the accompanying copy of a letter from the Dominions Office to the Secretary of the British South Africa Company in London.

His Excellency has been informed by the Secretary of State that he concurs in the reopening of negotiations with the Tribe for the grant of a new Concession on the basis of that granted in 1923. The Secretary of State desires, however, that in communicating this intimation to you, your attention should be drawn to paragraph 2 of the enclosed letter.

I am to add that, by direction of the Secretary of State, the Chief of the Bakgatla is being given to understand that, whilst the Government has no objection to his negotiating a fresh agreement with the Company, it is not asking him to do so, and that the tribe have a free hand in the matter.

I have, &c.,
Shirley Eales,
Acting Imperial Secretary.

Sir Drummond Chaplin, G.B.E., K.C.M.G.

Enclosure 2 in No. 57.

(Bechuanaland Protectorate.)
(Confidential.)
(No. 2162.)

High Commissioner's Office, Pretoria, 11th November, 1932.

Sir,

With reference to my despatch No. 2118 of the 27th October regarding the Linchwe Concession, I have the honour to transmit herewith a copy of a telegram, and of an earlier despatch from the Secretary of State. I also enclose a copy of a letter which has been addressed to Sir Drummond Chaplin.

2. I shall be obliged if, as directed in the enclosed telegram from the Secretary of State, you will cause Chief Molefi Pilane, and the Ex-Chief Isang to be informed that whilst the Government has no objection to their negotiating a fresh agreement with the Company, the Government is not asking them to do so, and that they have a free hand in the matter.

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* No. 52.

3. I attach also a copy of a further despatch which has been received from the Secretary of State by this mail.

I have, &c.,
H. J. STANLEY,
High Commissioner.

His Honour the Resident Commissioner
of the Bechuanaland Protectorate.

Enclosure 3 in No. 57.

(No. 2477.)

SIR, High Commissioner's Office, Cape Town, 4th January, 1933.

I AM directed by the High Commissioner to invite attention to the fourth paragraph of my letter No. 2194 of the 2nd December with reference to the proposed application of the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932, to the Bakgatla Reserve, and to inquire whether the British South Africa Company has any further observations to submit for His Excellency's consideration before the Proclamation is applied to that Reserve.

I am, &c.,
SHIRLEY EALES,
Administrative Secretary.

Sir Drummond Chaplin, G.B.E., K.C.M.G.

Enclosure 4 in No. 57.

THE RHODESIA CHARTERED AGENCY LIMITED.

Northern Assurance Company's Building,
DEAR SIR, 106-110, St. George's Street, Cape Town, 6th January, 1933.

WITH reference to your letter of the 4th instant, I have no further observations to submit before the Mines and Minerals Proclamation is applied to the Bakgatla Reserve, as it does not appear that such action would in any way prejudice the arrangement of a fresh concession should this be desired later on.

Yours, &c.,
DRUMMOND CHAPLIN.

The Administrative Secretary,
High Commissioner's Office,
Parliament Street,
Cape Town.

Enclosure 5 in No. 57.

HIGH COMMISSIONER'S NOTICE, No. 1 OF 1933.

IT is hereby notified for general information that under and by virtue of the powers in him vested by Section six (1) of the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932 (No. 33 of 1932), His Excellency the High Commissioner has been pleased to specify the Bakgatla Reserve as an area within the Protectorate to which the said Proclamation shall apply, with effect from the date of publication of this Notice in the *Gazette*.

By Command of His Excellency the High Commissioner.

SHIRLEY EALES,
Administrative Secretary.

High Commissioner's Office, Cape Town,
9th January, 1933.

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10141/163.

No. 58.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 6th March, 1933.)

(Bechuanaland Protectorate.)
(No. 127.)

SIR, High Commissioner's Office, Cape Town, 15th February, 1933.

WITH reference to my despatch No. 743 of the 29th December last,* I have the honour to enclose, for your information, a copy of the documents on the subject of the mineral rights of the British South Africa Company in the Bakwena Reserve, Bechuanaland Protectorate.

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure 1 in No. 58.

(Bechuanaland Protectorate.)
(No. 5286/1.) Resident Commissioner's Office,
Mafeking, C.P., 19th January, 1933.

SIR,

I HAVE the honour to acknowledge the receipt of Your Excellency's despatch No. 2554 of the 23rd December regarding the desire of the British South Africa Company that its concessionary rights in the Bakwena Reserve should be extended to include provision for the pegging of claims for, and the working of, minerals other than precious metals or diamonds.

2. Under the Bakwena Concession dated the 28th August, 1889, as modified by the Secretary of State, the British South Africa Company as the present registered holders of the Concession have the sole right for a period of five years reckoned from the 21st October, 1932, of prospecting within the Reserve for precious stones and precious metals and the right within the period mentioned to mark off an area for mining operations not exceeding 10 miles square.

3. Regarding paragraph 2 of Sir Drummond's letter the position under the Proclamation is, that unless and until a lease or cession of the rights under the Concession is made by the British South Africa Company and registered in favour of the Victoria Prospecting Company, prospecting in the Reserve may only be undertaken by the last-mentioned Company as an employee or as Agent of the British South Africa Company (Section 7 (1) and (3)). Also, the Victoria Prospecting Company may not within the selected mining area of 10 miles square peg claims on its own behalf but only for and on behalf of the British South Africa Company as the registered holders of the Concession (Section 29 (3)). In other words, unless the rights under the Concession are ceded to the Victoria Prospecting Company, that Company may not peg claims in its own name, nor may the Mining Commissioner issue claim licences in the Company's name but only in that of the British South Africa Company.

4. The remarks contained in preceding paragraph do not of course apply to paragraph 3 of Sir Drummond's letter for the reason that prospecting for and the winning of diamonds may only take place on a Native Reserve under the terms and conditions contained in a Crown Grant issued under the provisions of Section 35 (Section 39 (2)). It would appear necessary, however, that such Grant if and when issued should, in the circumstances related by Sir Drummond, be ceded to the De Beers Company and that such cession should be registered before recognition could be given to that Company under the Proclamation.

5. Regarding paragraph 4 of Sir Drummond's letter, it is true that the existing Concession confers no right to prospect for or mine any minerals other than precious metals or precious stones, and of the methods suggested by Sir Drummond Chaplin regarding the manner in which the British South Africa Company might acquire the right of prospecting and mining for diamonds and minerals as defined by Section 2 (1) (L) of the Proclamation throughout the whole of the Reserve, I am inclined to favour the alternative proposal mentioned in the penultimate paragraph of his letter.

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* No. 55.

for the reason that the issue of a Crown Grant would be likely to be the most expeditious, and also for the reason that the consideration to the Chief and Tribe (at least in part) is legally fixed by the payment of Royalties as provided in Section 35 (4). Such grant could, if deemed advisable, contain provision for the payment to the Chief and Tribe of claim licences based on the extent of any selected mining area or areas at the rates laid down in Section 11, and any additional consideration payable for the benefit of the Administration as may be considered reasonable or equitable.

I have, &c.,
C. F. Rey,
Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

Enclosure 2 in No. 58.

Telegram from Administrative Secretary, Cape Town to Assistant Resident Commissioner, Mafeking.

No. 31. 7th February, 1933. We are not clear as to effect of last sentence of Resident Commissioner's despatch No. 5286/1 of 19th January regarding Bakwena Reserve. Would not claim licence moneys be payable to Administration and not to Chief and Tribe and be subject to refund as provided in Section 11 (2) of Mining Proclamation, and would not additional consideration referred to presumably in respect of additional mineral rights to be obtained by Company be payable to tribe as owner of the mineral rights and not to the Administration?

Enclosure 3 in No. 58.

Telegram from Assistant Resident Commissioner, Mafeking, to Administrative Secretary, Cape Town.

No. 622. 8th February, 1933. Your telegram No. 31 yesterday. In view of provisions of Section 35 (3) which empowers His Excellency to issue Crown Grants subject to such limitations, terms and conditions as he may deem necessary it is submitted that Section 11 need not be applied nor taken into consideration regarding the issue of such Grants except for the purpose of fixing the amount of rental or claim licence to be paid to the Tribe as suggested in my despatch. Additional consideration referred to, is to replace loss of rental which would be payable to Administration under Section 31 if effect were given to Company's application by grant of new Concession.

Enclosure 4 in No. 58.

(No. 202.)

Dear Sir Drummond, Cape Town, 11th February, 1933.

With reference to the British South Africa Company's concessionary rights in the Bakwena Reserve the High Commissioner desires me to send the following reply to your letter of the 20th December.

2. Under the Bakwena Concession dated the 28th August, 1889, as modified by the Secretary of State, the British South Africa Company as the present registered holder of the Concession has the sole right for a period of five years reckoned from the 21st October, 1932, of prospecting within the Reserve for precious stones and precious metals and the right within the period mentioned to mark off an area for mining operations not exceeding 10 miles square.

3. As regards the 2nd paragraph of your letter, the position under the Mines and Minerals Proclamation, 1932, is that, unless and until a lease or cession of the rights under the Concession is made by the British South Africa Company and registered in favour of the Victoria Prospecting Company, prospecting in the Reserve may only be undertaken by the latter Company as an employee or as agent of the

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British South Africa Company (Section 7 (1) and (3)). Further, the Victoria Prospecting Company may not within the selected mining area of 10 miles square peg claims on its own behalf but only for and on behalf of the British South Africa Company as the registered holder of the Concession (Section 29 (3)). In other words, unless the rights under the Concession are ceded to the Victoria Prospecting Company, that Company may not peg claims in its own name, nor may the Mining Commissioner issue claim licences in the Company's name but only in that of the British South Africa Company.

4. The remarks in the preceding paragraph do not of course apply to the third paragraph of your letter for the reason that prospecting for and the winning of diamonds may only take place on a Native Reserve under the terms and conditions contained in a Crown Grant issued under the provisions of Section 35 (Section 39 (2)).

5. His excellency understands from the last paragraph of your letter that the additional rights which the British South Africa Company desires to obtain are—

(*a*) an extension of its rights under the existing Concession in order that it may conduct mining operations anywhere in the Reserve instead of within an area not exceeding ten miles square; and

(*b*) the right to peg claims for and to work minerals other than precious metals or stones.

I am to say that His Excellency would see no objection to negotiations being opened by the Company with the Chief and the Tribe with a view to the conclusion of an agreement on the lines indicated, subject to such terms and conditions as might be agreed upon between the Company and the Tribe, which would presumably include the payment to the Tribe of appropriate consideration in respect of any additional rights to be granted. Any such agreement would of course be subject to the approval of the Secretary of State, and it would be made clear to the Chief by the Resident Commissioner that, while the Administration has no objection to his negotiating with the Company with a view to the conclusion of a new agreement, it is not asking him to do so, and that he has a free hand in the matter, but that in any event no such agreement would be valid until it has received the approval of the Secretary of State.

6. The question whether any new agreement should take the form of a Concession or of a Crown Grant by the High Commissioner would have to be considered in consultation with the Chief.

Yours sincerely,
Shibley Eales.

Sir Drummond Chaplin, C.B.E., K.C.M.G.

Enclosure 5 in No. 58.

(Bechuanaland Protectorate.)
(No. 202.)

Sir, High Commissioner's Office, Cape Town, 11th February, 1933.

I have had under consideration your despatch No. 5286/1 of the 19th January and the subsequent telegraphic correspondence with reference to the desire of the British South Africa Company that its concessionary rights in the Bakwena Reserve should be extended to include provision for the pegging of claims for and the working of minerals other than precious metals or diamonds.

2. I enclose herewith a copy of a letter which by my direction has been written to Sir Drummond Chaplin in the light of your despatch.

3. With reference to the last paragraph of your despatch and the points dealt with in the subsequent telegrams it would appear that the Company's present rights consist of the right to prospect over the Reserve for a period of five years and the right within that period to mark off an area of mining operations not exceeding 10 miles square; and that it desires to obtain in addition—

(*a*) an extension of its rights held under existing Concession in order that it may conduct mining operations anywhere in the Reserve instead of within an area not exceeding ten miles square; and

(*b*) the right to peg claims for and to work minerals other than precious metals and stones.

4. The question whether such additional rights as the Company desires to obtain should be conferred by means of a new concession granted by the Tribe (subject to the approval of the Secretary of State), or by means of a Crown Grant issued under Part IV of the Proclamation will presumably depend upon the wishes of the Chief, whose consent in writing would appear to be necessary before any Crown Grant conferring mineral rights in the Reserve could be made. It seems doubtful whether any saving of time would be effected by dealing with the matter by way of Crown Grant, since, whichever course were adopted, negotiations between the Company and the Chief and the Tribe will be necessary, and I should wish to obtain the sanction of the Secretary of State before making any Crown Grant of minerals in a Native Reserve in the same way as his approval would be required if such rights were proposed to be conferred by means of a concession by the Chief.

5. As regards the terms on which such additional rights might be conferred upon the Company, the position appears to be that, if such rights were to be granted by means of a new concession, provision would need to be made in the deed of concession for the payment to the Tribe of some extra consideration, *e.g.*, by way of annual rental, in respect of the additional rights to be granted, and for some share of any profits on mining operations (either on the basis of the royalty prescribed in section 28 and the Second Schedule to the Mining Proclamation or on such other basis as might be agreed upon) to be secured for the benefit of the Tribe. Any new concession would of course be subject generally to the provisions of the Mines and Minerals Proclamation, including the payment of claim licences, (not " rental " as mentioned in the Assistant Resident Commissioner's telegram No. 622 of the 8th of February) in terms of Section 11 of the Proclamation, and the payment to the Crown of the rental prescribed in Section 31. In this context it is not clear to me what *loss* of rental payable to the Administration under Section 31 of the Proclamation would be sustained (as suggested in the last sentence of the Assistant Resident Commissioner's above-mentioned telegram) if effect were to be given to the Company's application by the grant of a new concession, though no additional consideration, except such as the Company might agree to pay to the Tribe in return for an extension of the Company's rights under its existing concession and the grant of base mineral rights, would accrue.

6. You will presumably communicate with the Chief in the sense of the last sentence of my despatch No. 2554 of the 23rd December last.

I have, &c.,
H. J. STANLEY,
High Commissioner.

His Honour
The Resident Commissioner of the
Bechuanaland Protectorate

Enclosure 6 in No. 58.

Resident Commissioner's Office,
Mafeking, C.P., 10th February, 1933.

MY DEAR EALES,

WITH reference to your telegram No. 31 of the 7th February and my reply No. 622 of the 8th February, on further consideration I think your contention is correct, viz., that claim licence moneys should be payable to Administration and be subject to refund as provided in Section 11 (2) of the Mining Proclamation and the amount of any additional consideration be payable to the Tribe.

Yours &c.,
R. REILLY.

Shirley Eales, Esquire, C.B.E.

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10141/164.

No. 59.

DESPATCH
from
HIGH COMMISSIONER, SOUTH AFRICA
(Received 20th March, 1933.)
[*Answered by No. 60.*]

(Bechuanaland Protectorate.)
(No. 155.)
(Confidential.)

High Commissioner's Office,
Cape Town, 27th February, 1933.

SIR,

WITH reference to my despatch No. 530 of the 7th September last,* I have the honour to transmit herewith, for your information, a copy of further correspondence with Mr. D. P. C. Blair, of Johannesburg, relative to the position of Balkis Limited under the Bechuanaland Protectorate Mines and Minerals Proclamation.

2. It will be observed that in response to the inquiry contained in the letter of the 27th January to Mr. Blair he stated that I should be correct in assuming that the Company had no further observations to offer before steps were taken to apply the Proclamation to the areas in question.

3. The Proclamation has already been applied to the Bangwaketsi Reserve, and it is now being applied to the Lobatsi Block. The question arises whether it should also be applied to the Bamalete Native Reserve, and if so whether that Reserve should be regarded as falling within the area of the concessions held by Balkis Limited. In this context I enclose a copy of correspondence with the Resident Commissioner and also a copy of the Notices issued by the Acting Registrar of Deeds recording the registration by the Company of its concessions in terms of Section 4 of the Proclamation.

4. As pointed out in the Resident Commissioner's enclosed despatch of the 7th February (which crossed my despatch of the 10th February in the post), the application of the Proclamation to the Bamalete Reserve, and the acceptance by the Crown of the rental prescribed in Section 31, might be interpreted as definitely recognising a claim by Balkis Limited that the Bamalete Reserve forms part of the area in respect of which the Company holds concessionary rights. The Resident Commissioner has referred in his above-mentioned despatch to the statement in Mr. Amery's telegram Confidential of the 10th June, 1927,† that " for the time being it seems necessary to act on the assumption that the Company's rights under their concessions extend to the Bamalete Reserve." I am not aware, however, whether the view expressed in Mr. Amery's telegram is affected by the observations which were submitted in Colonel Daniel's Confidential despatch No. 242 of the 2nd June, 1926 (see Lord Athlone's Confidential despatch of the 16th July, 1926)‡ upon the Departmental Memorandum from which an extract accompanied Mr. Amery's Confidential despatch of the 3rd March, 1926,§ and before steps are taken with a view to the application of the Mineral Proclamation to the Bamalete Reserve or any recognition is accorded by the Administration to Balkis Limited of mineral rights therein, I should be glad to receive your instructions.

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure 1 in No. 59.

High Commissioner's Office, Pretoria, 25th October, 1932.

SIR,

WITH reference to your letter of the 2nd September regarding the position of Balkis Limited under the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932, in respect of its concessions in the Protectorate, I am directed to inquire whether circumstances now permit of your furnishing a reply.

I am, &c.,
SHIRLEY EALES,
Acting Imperial Secretary.

D. P. C. Blair, Esq.

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* No. 49.
† No. 14 in Dominions (South African) No. 3.
‡ No. 59 in Dominions (South African) No. 2.
§ No. 49 in Dominions (South African) No. 2.

Enclosure 2 in No. 59.

23, Aegis Buildings, Loveday Street,
Johannesburg, 1st November, 1932.

SIR,

Balkis Limited.

I DULY received yours of the 25th ultimo.

Referring to your letter of the 15th August, 1932, I shall be glad to know what areas within the Protectorate the High Commissioner proposes to apply the Proclamation to.

It is, of course, understood that all prospecting and claim licences issued by my Company before the coming into force of the said Proclamation will be protected.

I am, &c.,
D. P. C. BLAIR.

The Acting Imperial Secretary,
High Commissioner's Office,
Pretoria.

Enclosure 3 in No. 59.

(No. 1745.)

High Commissioner's Office, Pretoria, 23rd November, 1932.

SIR,

IN reply to your letter of the 1st November on the subject of the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932, I am directed to inform you that the Proclamation has already been applied to the Bamangwato and Bakwena Native Reserves, and that the High Commissioner has decided to apply it to the Tuli and Gaberones Blocks forthwith. His Excellency has at present under consideration the question of applying it also to the Crown Lands in the Ghanzi, Kgalagadi, and Chobe magisterial districts, and to the Nakgatla and Batawana Native Reserves, as well as to the Lobatsi Block, and the Bangwaketsi and Bamalete Native Reserves.

With reference to the last paragraph of your letter, I am to refer you to the provisions of Part III. of the Proclamation relating to prospecting and mining on land held under Mineral Concession. While the High Commissioner is not aware of the nature of the "Prospecting and Claim Licences" issued by Balkis Limited before the coming into force of the Proclamation, I am to observe that the prospecting and mining rights of holders of concessions would appear to be safeguarded by the provisions of Section 29 (3) of the Proclamation which provide that there shall be no limit to the number of claims which the holder of a concession may peg and acquire, or his servants authorized to prospect for him may peg and acquire title for on his behalf.

I am, &c.,
SHIRLEY EALES,
Administrative Secretary.

Enclosure 4 in No. 59.

(No. 1745.)

Cape Town, 27th January, 1933.

SIR,

WITH reference to my letter No. 1745 of the 23rd November, 1932, and previous correspondence, I am directed to inquire whether I may expect to receive a further communication from you regarding the proposed application of the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932, to any areas which may be affected by the Balkis Company's concessions in the Protectorate, or whether the High Commissioner would be correct in assuming that the Company has no further observations to offer before steps are taken to apply the Proclamation to the areas in question.

An early reply would be appreciated.

I am, &c.,
SHIRLEY EALES,
Administrative Secretary.

D. P. C. Blair, Esq.

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Enclosure 5 in No. 59.

23, Aegis Buildings, Loveday Street,
Johannesburg, 1st February, 1933.

SIR,

Balkis Limited.

WITH reference to your letters No. 1745 of the 23rd November, 1932, and 27th January, 1933, and previous correspondence, I have to inform you that the High Commissioner is correct in assuming that the Company has no further observations to offer before steps are taken to apply the Proclamation to the areas in question.

I am, &c.,
D. P. C. BLAIR.

The Administrative Secretary,
High Commissioner's Office,
Cape Town.

Enclosure 6 in No. 59.

(No. 5277.)

The Resident Commissioner's Office,
Mafeking, 25th January, 1933.

SIR,

I HAVE the honour to refer to Your Excellency's despatch No. 1745 of the 23rd November, 1932,* on the subject of the position of the Balkis Limited under the Mines and Minerals Proclamation, 1932.

2. As I am now informed by the Registrar of Deeds that the Kanye and Gaecitsiwe Mineral Concessions affecting the Bangwaketsi Reserve, including the various transactions under which title to these concessions was acquired by the Balkis Limited, will shortly be registered in terms of Section 4 of the Proclamation, I shall be grateful if Your Excellency will consider applying forthwith the Proclamation to this Reserve.

3. Regarding any prospecting and mining rights which may have been acquired by certain persons from the Company under the "Prospecting and Claim Licences" referred to in Mr. Blair's letter of the 1st November, 1932, a copy of which was enclosed with Your Excellency's despatch, I think this matter is one for settlement between the parties and that it should be capable of satisfactory adjustment under the provisions of the Proclamation.

4. A point for consideration in this matter, in view of the present financial position of the Administration is that immediately the Proclamation is applied to the Reserve an amount of £900 per annum becomes due and payable to the Crown in terms of Section 31.

5. I enclose for Your Excellency's consideration and publication in the "Gazette," if approved, three draft Notices applying the Proclamation to the Bangwaketsi Reserve, declaring the Reserve a Mining District and appointing the Magistrate as Mining Commissioner.

I have, &c.,
C. F. REY,
Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

Enclosure 7 in No. 59.

TELEGRAM FROM RESIDENT COMMISSIONER, MAFEKING, TO HIGH COMMISSIONER, CAPE TOWN.

No. 604. 3RD FEBRUARY, 1933. With reference to my despatch No. 5277 of 25th January, as Balkis Concessions registered 27th January would be grateful if Mining Proclamation could be applied Bangwaketsi Reserve by publication of Notice in next issue of "Gazette." Matter of some importance as Registrar of Deeds is now required forthwith to publish notice of registration of these concessions stating period for which they may be exercised.

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* Not sent. Enclosed copy of letter dated 23rd November, 1932, to Mr. D. P. C. Blair.

Enclosure 8 in No. 59.

TELEGRAM FROM HIGH COMMISSIONER, CAPE TOWN, TO RESIDENT COMMISSIONER, MAFEKING.

No. 26. 3RD FEBRUARY, 1933. Your despatch No. 5277 of 25th January and telegram No. 604 of 3rd February.

Blair has now written to say that Balkis Limited have no further observations to offer before Mining Proclamation is applied.

As regards draft Notices enclosed in your despatch should not Proclamation now be applied to Bamalete Reserve and Lobatsi Block as well as Ngwaketsi district? If so what amendments in all three draft Notices will be required.

Enclosure 9 in No. 59.

TELEGRAM FROM RESIDENT COMMISSIONER, MAFEKING, TO HIGH COMMISSIONER, CAPE TOWN.

No. 611. 4TH FEBRUARY, 1933. Reference Your Excellency's telegram No. 26 of 3rd February I should prefer that Proclamation be applied to Bangwaketsi Reserve only pending consideration of sheet (? effect) if any of Balkis Concessions on Bamalete Reserve and Lobatsi Block.

Enclosure 10 in No. 59.

(Bechuanaland Protectorate.)
(No. 5277.)

Resident Commissioner's Office,
Mafeking, C.P., 7th February, 1933.

SIR,

I HAVE the honour to refer to Your Excellency's telegram No. 26 of the 3rd February and to my telegram No. 748 (? 604) of the same date sent in reply thereto regarding the application of the Mines and Minerals Proclamation, 1932, to the Balkis Concessions Area.

2. The suggestion that for the present the Proclamation should be applied only to the Bangwaketsi Reserve is prompted for the reason that the application of the Proclamation to the Bamalete Reserve and the acceptance by the Crown in respect of that area of the rental prescribed in Section 31 might be interpreted as definitely recognizing the claim of the Balkis Limited that the Bamalete Reserve forms part of the area held by the Company under its concessionary rights.

3. In a memorandum dealing with this matter prepared in the Dominions Office on the 20th November, 1924 (see Lord Athlone's Confidential despatch No. 503 of the 23rd April, 1926), the conclusion was reached that "it would be very difficult to rule that the rights given by the Gaseitsiwe Concessions do not apply to the Bamalete Reserve" and in a telegram dated 10th June, 1927 (occasioned by the visit to the Reserve of a prospecting party sent by the Balkis Company), the Secretary of State said: "It has not been found possible to enter into any negotiations with the Balkis Company and for the time being it seems necessary to act on the assumption that the Company's rights under their Concessions extend to the Bamalete Reserve" (see High Commissioner's telegram of same date addressed to Resident Commissioner). I do not think, however, that I may regard these rulings as disposing of the point raised in paragraph 2 hereof, regarding which I shall be grateful to be favoured with Your Excellency's instructions. Before anything is done in regard to applying the Proclamation to the Bamalete Reserve, the Chief has been given a promise that he will be consulted.

4. Regarding the Lobatsi Block there does not appear to be any doubt that this falls within the area affected by the Balkis Company's Mineral Concessions, and I accordingly enclose herewith for Your Excellency's consideration, and publication if approved, notices applying the Proclamation to this area, declaring the area a mining district and appointing the Magistrate concerned as Mining Commissioner.

No conflict of rights to this area between the British South Africa Company and Balkis Limited can be seen, as under Section 3 of the Proclamation No. 4 of 1905 the rights conferred by that Proclamation in favour of the British South Africa Company are made subject to any rights existing prior to its taking effect.

5. A further point for consideration not mentioned in my telegram referred to is, that as the Bangwaketsi Reserve, the Bamalete Reserve and the Lobatsi Block fall within different Magisterial Districts it appears advisable that each of these areas

should be declared a Mining District and the respective Mining Commissioners appointed thereto by separate Notices. This procedure will avoid the publication of involved notices.

6. Your Excellency is of course aware that both the Balkis Concessions are granted for an indefinite period, and that under Section 29 (1) of the Proclamation their duration is limited to 25 years reckoned as from the date on which the Proclamation is applied. It is not thought, however, that the Proclamation must necessarily be applied on the same date to the three areas affected, viz., the Bangwaketsi and Bamalete Reserves and the Lobatsi Block, however desirable that may be in ordinary circumstances.

I have, &c.
(for Resident Commissioner),
R. REILLY.

His Excellency
The High Commissioner,
Cape Town.

Enclosure 11 in No. 59.

(Bechuanaland Protectorate.)
(No. 281.)

SIR,

High Commissioner's Office, Cape Town, 10th February, 1933.

I HAVE had under consideration your despatch No. 5277 of the 25th January, and subsequent telegraphic correspondence regarding the question of the application of the Mines and Minerals Proclamation, 1932, to the areas affected by the concessions held by Balkis Limited.

2. I enclose herewith, with reference to my despatch No. 1745 of the 30th January a copy of a letter from Mr. D. P. C. Blair, Johannesburg, intimating that the Company has no further observations to offer before the Proclamation is applied to the areas in question.

3. I note from your telegram No. 611 of the 4th February that you would prefer that for the present the Proclamation should be applied only to the Bangwaketsi Reserve pending consideration of the effect, if any, of the Balkis Company's concessions on the Bamalete Reserve and the Lobatsi Block, and I am therefore causing Notices to be published in next week's "Gazette" in terms of the drafts enclosed with your above-mentioned despatch of the 25th January.

4. I presume that I may expect to receive a further communication from you with regard to the question of the application of the Proclamation to the Bamalete Reserve and the Lobatsi Block.

I have, &c.,
H. J. STANLEY,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

Enclosure 12 in No. 59.

High Commissioner's Gazette, 10*th February*, 1933.

NOTICE.

REGISTRATION OF MINERAL CONCESSION.

IT is hereby notified for general information, in terms of Section *thirty-six* (1) of the Regulations under the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932 (No. 33 of 1932), that the Mineral Concession Agreement relating to that portion of the Bechuanaland Protectorate falling under the rule of Chief Gaseitsiwe of the Bangwaketse on the 13th October, 1887, which concession is more fully described hereunder, was registered by me on the 27th January, 1933.

Date of Concession: 13th October, 1887.
By whom granted: Chief Gaseitsiwe.
Original grantees: A. S. Woolley, J. A. Nicolls, and G. Riesle.

Description of rights conferred.—The right for an indefinite* period to prospect for precious stones and precious and other minerals, including the right to select mining areas not to exceed in the aggregate 400 square miles, subject to the terms and conditions contained in the said Agreement.

Present holder of the concession: Balkis Limited.

* This period is limited to 25 years from the date on which the Proclamation, in terms of Section *six* (1) thereof, is applied to the Concession area.

A. H. Barratt,
Acting Registrar of Deeds for the
Bechuanaland Protectorate.

Mafeking, 6th February, 1933.

Notice.

Registration of Mineral Concession.

It is hereby notified for general information, in terms of Section *thirty-six* (1) of the Regulations under the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932 (No. 33 of 1932), that the Mineral Concession Agreement relating to that portion of the Bechuanaland Protectorate falling under the rule of Chief Gaseitsiwe of the Bangwaketse on the 29th March, 1888, which concession is more fully described hereunder, was registered by me on the 27th January, 1933.

Date of Concession: 29th March, 1888.

By whom granted: Chief Gaseitsiwe.

Original grantee: John Williams.

Description of rights conferred.—The right for an indefinite* period to prospect for precious stones and precious and other minerals, including the right to select mining areas not to exceed in the aggregate 400 square miles, subject to the terms and conditions contained in the said Agreement.

Present holder of the concession: Balkis Limited.

* This period is limited to 25 years from the date on which the Proclamation, in terms of Section *six* (1) thereof, is applied to the Concession area.

A. H. Barratt,
Acting Registrar of Deeds for the
Bechuanaland Protectorate.

Mafeking, 6th February, 1933.

10141/164.

No. 60.

DESPATCH

to

HIGH COMMISSIONER, SOUTH AFRICA.

[*Answered by No. 73.*]

(Bechuanaland Protectorate.)
(No. 170.)
(Confidential.)

Downing Street, 12th May, 1933.

Sir,

I have the honour to acknowledge the receipt of your despatch No. 155 of the 27th February† on the subject of the mineral concessions held by the Balkis Company in the Bechuanaland Protectorate.

2. The question whether these concessions should be regarded as extending to the Bamalete Reserve was considered in the departmental memorandum enclosed in Mr Amery's Confidential despatch of the 3rd March, 1926.‡ The conclusion reached in that memorandum was that it would be very difficult to rule that the rights given by these concessions did not extend to the Bamalete Reserve and that a ruling adverse to the claims of the Company might give rise to litigation. The observations submitted

† No. 59. ‡ No. 49 in Dominions (South African) No. 2.

in Colonel Daniel's despatch No. 242 of the 2nd June, 1926,* were duly considered, but no reason was seen to alter the conclusion reached in the departmental memorandum, and your predecessor was accordingly informed in Mr. Amery's telegram of the 10th June, 1927,† that, for the time being, it seemed necessary to act on the assumption that the Company's rights extended to the Bamalete Reserve. This conclusion was subsequently referred to in Mr. Amery's Confidential despatch No. 41 of the 23rd January, 1929,‡ in which it was pointed out that in the circumstances it would be desirable to come to terms with the Company as to the revision of their concessions, and that it would appear desirable that it should be arranged that in any such revision the concessions should not be regarded as extending to this Reserve. In this connexion I would refer to paragraph 3 of Lord Athlone's Confidential despatch of the 16th July, 1926,§ suggesting that the Balkis Company might be prepared to surrender their claims over the Bamalete Reserve in exchange for the grant of mining rights over certain Crown lands for which they had applied in that year.

3. I note from your despatch that the existing concessions of the Balkis Company have been registered under the terms of Section 4 of the Mining Proclamation and that the Proclamation has been applied to the Bangwaketsi Reserve and the Lobatsi Block, but that in the case of the Bamalete Reserve the Chief has been promised that the Proclamation will not be applied without first consulting him. Assuming that the Chief adheres to the attitude adopted by him in 1927 with regard to this matter, as to which I would refer to Lord Athlone's despatch Confidential (2) of the 27th September, 1927,‖ and previous correspondence, the best course would appear to be to inform the Company of the attitude taken up by the Chief and to inquire whether, in the circumstances, they would be prepared to agree to an arrangement on the lines suggested by Lord Athlone in the despatch already referred to. Any such arrangement would, of course, be subject to the right of the British South Africa Company to be given the option of taking a Crown Grant in respect of the area in question, in accordance with the usual procedure.

4. If you concur in this view, I should be glad if you would approach the Balkis Company on these lines.

I have, &c.,
J. H. THOMAS

20869/5.

No. 61.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 22nd May, 1933.)

(Bechuanaland Protectorate.)
(No. 335.)
(Confidential.)

High Commissioner's Office, Pretoria, 3rd May, 1933.

Sir,

With reference to your Confidential despatch No. 416 of the 19th October, 1932,¶ I have the honour to enclose, for your information, a copy of the documents on the subject of the proposed grant to the Linchwe Concession Company of a new concession of mineral rights in the Bakgatla Reserve, Bechuanaland Protectorate.

I have, &c.,
H. J. STANLEY,
High Commissioner

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* Enclosure 2 in No. 59 in Dominions (South African) No. 2.
† No. 14 in Dominions (South African) No. 3. ‡ No. 26 in Dominions (South African) No. 3.
§ No. 59 in Dominions (South African) No. 2. ‖ No. 19 in Dominions (South African) No. 3.
¶ 20869/2: not printed.

Enclosure 1 in No. 61

THE RHODESIAN CHARTERED AGENCY LIMITED.

Northern Assurance Company's Building,
106-110, St. George's Street, Cape Town,
18th April, 1933.

DEAR MR. EALES,

You will remember that last year the British South Africa Company was informed by the Dominions Office that if the Chief of the Bakgatla should be willing to grant the Linchwe Concession Company a new concession, the Secretary of State would be prepared to consider approving it; see the Dominions Office letter to the British South Africa Company of the 11th October, 1932.

The Linchwe Concession Company, before reopening negotiations with the Acting Paramount Chief, inquired of the Victoria Prospecting Company whether that Company would be willing to take from the Linchwe Concession Company a grant of the right to prospect the Bakgatla territory and select an area or areas not exceeding 100 square miles in the aggregate, with the right to peg claims in the area or areas selected on terms similar to those granted to the Victoria Prospecting Company by the British South Africa Company in respect of the Bakwena Reserve, except that in this case the prospective rights would cover all minerals except diamonds.

The Victoria Prospecting Company replied that they were not prepared to consider the acquisition of further prospecting rights at the present time.

It followed from this, that if the Linchwe Company were now to obtain the proposed new concession it would become responsible for the additional expense involved by increased payments to the Chief and the statutory rental, in addition to the cost of doing the necessary prospecting work. The Linchwe Company, under these circumstances, have asked whether, before anything further is done in the direction of opening negotiations for the new concession, arrangements could be made for a brief superficial examination of the Bakgatla Reserve, to enable them to judge of the justification for incurring the expense involved in undertaking the liabilities above mentioned.

It may be possible for Dr. Bancroft to arrange for this superficial examination, which would probably take the form of sending Dr. Guernsey with a motor car into the Reserve for a period of about three weeks, probably in July or August next. Before making definite arrangements, however, the Linchwe Company would like to know whether either the Protectorate Administration or the Chief would raise any objection to this examination being made.

It is assumed that, in the event of permission being given, no fee would be charged either by the Administration or the Chief.

I should be obliged if you would let me know whether the High Commissioner would have any objection to this arrangement and, if not, whether the Chief should be approached personally, either through an official of the Administration or by Dr. Bancroft's representative direct.

If possible, I should like to have a reply to this letter before I leave for London on the 28th instant.

Yours, &c.,
DRUMMOND CHAPLIN.

S. Eales, Esq.,
Administrative Secretary,
High Commissioner's Office,
Pretoria.

Enclosure 2 in No. 61.

High Commissioner's Office, Pretoria,
22nd April, 1933.

DEAR SIR DRUMMOND,

I HAVE shown to the High Commissioner your letter of the 18th April inquiring whether, before any further action is taken with reference to the proposed grant to the Linchwe Concession Company of a new mineral concession in the Bakgatla Reserve, arrangements could be made for a brief superficial examination of the Reserve.

His Excellency asks me to say that it will be necessary to consult the Protectorate Authorities in the matter, and that he hopes that a reply to the communication which

has been addressed to the Resident Commissioner at Mafeking may be received in time to permit of an answer being sent to your letter, either by mail or by telegraph, so as to reach you at Cape Town before you leave for England on the 28th instant.

Yours, &c.,
SHIRLEY EALES.

Sir Drummond Chaplin, C.B.E., K.C.M.G.

Enclosure 3 in No. 61

(Bechuanaland Protectorate.)
(No. 957.)
(Confidential.)
High Commissioner's Office, Pretoria,
22nd April, 1933.

SIR,

WITH reference to my Confidential despatch No. 2162 of the 11th November, 1932, I have the honour to transmit herewith, for your consideration and observations, a copy of a letter from Sir Drummond Chaplin inquiring whether before any further action is taken in connexion with the proposed grant to the Linchwe Concession Company of a new mineral concession in the Bakgatla Reserve, arrangements could be made for a brief superficial examination of the Reserve on behalf of the Company.

You will observe that Sir Drummond Chaplin is anxious to receive a reply to his letter before he sails for England on the 28th instant, and I should be obliged therefore if your observations could be communicated to me by telegraph as soon as possible.

I have, &c.,
H. J. STANLEY,
High Commissioner.

His Honour
The Resident Commissioner of the Bechuanaland Protectorate.

Enclosure 4 in No. 61.

From Resident Commissioner, Mafeking,
To High Commissioner, Pretoria.
(No. 37.)
26th April, 1933.

REFERENCE Your Excellency's despatch No. 957 of 22nd April proposed grant to Linchwe Concession Company of new mineral concession in Bakgatla Reserve. Chief Molefi agrees to suggestion of superficial examination of Bakgatla Reserve lasting for period of about three weeks in July or August next. I support the course proposed, although it would appear to be technically in conflict with the provision of the Mining Law, but in the interests of mining in the Territory, especially in the present emergency, I agree. No fee will be charged either by the Administration or the Chief.

Enclosure 5 in No. 61.

From Administrative Secretary, Pretoria,
To Chaplin, c/o Charter, Cape Town.
26th April, 1933.

MY letter of 22nd April.

High Commissioner has no objection and Resident Commissioner, Bechuanaland Protectorate, reports that Chief Molefi agrees to brief superficial examination of Bakgatla Reserve on behalf of Linchwe Concession Company lasting for period of about three weeks in July or August next. No fee will be charged by Administration or Chief.

Enclosure 6 in No. 61.

THE RHODESIAN CHARTERED AGENCY LIMITED.

Northern Assurance Company's Building,
St. George's Street, Cape Town,
27th April, 1933.

DEAR MR. EALES,

Linchwe Concession.

I HAVE to thank you for your telegram of 26th instant, informing me that the High Commissioner and Chief Molefi have no objection to a brief superficial examination of the Bakgatla Reserve being made on behalf of the Linchwe Concession Company and that no fee will be charged.

Yours, &c.,
DRUMMOND CHAPLIN

S. Eales, Esq.,
Administrative Secretary,
High Commissioner's Office, Pretoria.

10141/161.

No. 62.

DESPATCH

to

HIGH COMMISSIONER, SOUTH AFRICA.

[*Answered by No.* 65.]

(Bechuanaland Protectorate.)
(No. 190.)
(Confidential.)

SIR, Downing Street, 30th May, 1933.

I HAVE the honour to acknowledge the receipt of your Confidential despatch No. 745 of the 30th December* on the subject of the preferential rights of the British South Africa Company in the Bechuanaland Protectorate.

2. I concur in the view expressed by yourself and your Legal Adviser that the effect of Lord Ripon's despatch of the 20th December, 1892, and other relevant correspondence was not to confer upon the British South Africa Company in perpetuity a privilege such as is claimed in Sir D. Chaplin's letter of the 18th October, 1932.† On the other hand as is pointed out in the minute to Mr. Duncan of the 16th November it would hardly be reasonable to take up the attitude that the Company should be required to state forthwith, and finally whether it desires to exercise its preferential rights over the entire extent of the Crown Lands in the Protectorate and that failure to exercise such rights immediately should entail the forfeiture of such rights.

3. In the circumstances I agree that so far as the Ghanzi, Kgalagadi, and Chobe magisterial districts are concerned, you should inform Sir D. Chaplin in the terms suggested in paragraph 15 of your despatch under reference. As regards the Batawana Reserve, I concur in the view expressed in paragraph 12 of your despatch, except that it seems to me doubtful whether there would be any advantage in applying the Proclamation to the Reserve under existing circumstances.

4. I have given very careful consideration to the further proposals in your despatch as to the steps which might be taken to impose a time-limit on the Company's preferential rights throughout the Protectorate, but as at present advised I am inclined to think that it would be inopportune for the Government to raise this general question with the Company at the present moment. It may be that on receipt of the communication to Sir Drummond Chaplin proposed in the previous paragraph the Company will themselves put forward further proposals for a general settlement, but if the arrangement proposed in the case of the three magisterial districts is accepted action on similar lines could be taken in other cases in which it is desired in the future to throw open Crown land to public prospecting.

I have, &c.,
J. H. THOMAS

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* No. 56. † Enclosure 1 in No. 54.

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10141/165

No. 63.

SIR H. F. BATTERBEE (DOMINIONS OFFICE)

to

SIR HERBERT STANLEY (HIGH COMMISSIONER, SOUTH AFRICA).

(Confidential.)

MY DEAR STANLEY, Downing Street, 30th May, 1933.

BY this mail you will receive the Secretary of State's Confidential despatch No. 190 of the 30th May, 1933,* dealing *inter alia* with the question of imposing a time limit on the British South Africa Company's preferential rights in the Bechuanaland Protectorate which was raised in your despatch No. 745 of the 30th December.† I am sorry that we have not been able to send you an earlier answer, but you will understand that this question required very careful consideration. I am now writing to explain the reasons which have led us to the conclusion that it would be better not to raise the general question of terminating the Company's rights, at any rate for the time being. As you will see, some of them are not such as could well be dealt with in an official despatch.

In the first place, it is not altogether clear to us how the local Administration can be described as being seriously hampered under present conditions in any attempt to encourage mineral development. Though Rey refers to "vexatious delays invariably caused by having, in the first place, to consult the British South Africa Company," he admits that in the area in question there had, at the date on which he was writing, been no application for mineral concessions; and it does not appear very likely that there will in fact be many substantial applications unless the investigations which the British South Africa Company are undertaking in their own area are successful. It seems to us that, until there has been more experience of the actual working of the present procedure, it is too early to form an opinion as to its practical, as distinct from its theoretical, disadvantages.

Assuming, however, that the existence of the Company's rights might, in certain circumstances, have the effect of hampering our efforts to encourage mineral development, it seems to us that they must also be regarded as constituting at least an equal potential obstacle to any project which may be entertained by the Union Government of utilising the Protectorate for the purpose of the settlement of poor whites or landless natives. In other words, if we were to get rid of the Company's rights we should be increasing the value of the Protectorate from the point of view of the Union as a field for land settlement and, *pro tanto*, strengthening their motives for pressing for its transfer. To this extent, therefore, the existing situation is not without political advantages, and the preferential rights of the British South Africa Company may be regarded as part of the line of defence against the reversionary claims of the Union.

Apart from this aspect of the question, the present moment seems a particularly unfavourable one for taking up this matter comprehensively with the Company. As you know, General Hertzog has intimated to the Secretary of State that, in his opinion, it is desirable that the High Commission Territories should be transferred forthwith, or at an early date, to the Union. So long as no definite answer is returned to this invitation to hand over the Territories it would seem anomalous to embark on negotiations implying on the face of them that there were no prospects of a change in the control of the administration of the Protectorate. Such negotiations might have the effect of inducing the Union Government to bring matters to a head, or at any rate to ask to be consulted before any decision is reached on a matter which they would regard as affecting their own reversionary interests. In either event an embarrassing situation would be created.

In general, although a final settlement with the Company as to their interests in the Protectorate will no doubt be desirable at some stage, it appears to us that such a settlement ought to follow, rather than to precede, a decision on the major question of transfer. It is, of course, possible that the Company themselves will take the initiative in raising the general question, and in this connexion it is to be noted that they stated in 1928, when the whole question was considered, that while they could take no exception to the decision then reached with regard to their preferential rights, they felt that it would be advisable that the matter should be settled by commutation on the lines of the original discussions. No agreement as to the basis of such commutation could,

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* No. 62. † No. 56.

however, then be reached, and it was left to the Company to put forward further proposals: and it still seems to us best, especially in view of the political considerations to which I have referred, not to take the initiative ourselves in making proposals to the Company. In the meantime, applications for prospecting rights of Crown grants over any area can be dealt with as they arise, the Company, in such cases, being first given the option of taking out a Crown grant in the area concerned.

Yours, &c.,
H. F. BATTERBEE.

20869/6.

No. 64.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 6th June, 1933.)

(Bechuanaland Protectorate.)
(No. 375.)

Sir, High Commissioner's Office, Pretoria, 17th May, 1933.

With reference to previous correspondence on the subject of the application of the Bechuanaland Protectorate Mines and Minerals Proclamation No. 33 of 1932 to the Bakgatla Reserve, I have the honour to inform you that the Resident Commissioner at Mafeking has reported that the Linchwe Concession, granted to Mr. Julius Weil on the 22nd July, 1898, was registered on the 2nd May, 1933. I attach a copy of the Notice of Registration which was published in my Official Gazette on the 12th instant.

2. I also enclose a copy of Notices which have been issued upon the recommendation of the Resident Commissioner declaring the Bakgatla Reserve to be a Mining District and appointing the Resident Magistrate of the Gaberones District to act as Mining Commissioner.

I have, &c.,
H. J. STANLEY,
High Commissioner.

Enclosure 1 in No. 64.

High Commissioner's Gazette, 12th May, 1933 [No. 2112].

Notice.

Registration of Mineral Concession.

It is hereby notified for general information, in terms of Section *thirty-six* (1) of the regulations under the Bechuanaland Protectorate Mines and Minerals Proclamation, 1932 (No. 33 of 1932), that the Mineral Concession Agreement relating to the area comprising the Bakgatla Reserve and more fully described hereunder was registered by me on the second day of May, 1933.

Date of Concession.—22nd July, 1898.
By whom granted.—Late Chief Linchwe.
Original Grantee.—Julius Weil.

Description of rights conferred.—The sole and exclusive right for a period of five years, reckoned from the 22nd July, 1898, to prospect for precious stones, gold and other minerals, together with the right within the period named to mark off a mining area not exceeding 100 square miles, which said rights were extended to the 22nd July, 1913. The selection of the said mining area of 100 square

miles having been made in the year 1910, the Concession, in terms of Section *twenty-nine* (1) of the above-mentioned Proclamation, endures in respect of that area for a period of twenty-five years, reckoned from the 13th January, 1933.

Present holder of the Concession.—Linchwe Concession Company, Limited.

A. H. Barratt,
Acting Registrar of Deeds for the Bechuanaland Protectorate.

Mafeking, 3rd May, 1933.

Enclosure 2 in No. 64.

High Commissioner's Notice No. 65 of 1933.

It is hereby notified for general information that, under and by virtue of the powers in him vested by Section *eighty-five* (1) of the Mines and Minerals Proclamation, 1932 (No. 33 of 1932) of the Bechuanaland Protectorate, His Excellency the High Commissioner has been pleased to declare the Bakgatla Reserve to be a Mining District for the purposes of the aforesaid Proclamation.

By Command of His Excellency the High Commissioner.

Shirley Eales,
Administrative Secretary.

High Commissioner's Office, Pretoria,
13th May, 1933.

Enclosure 3 in No. 64.

High Commissioner's Notice No. 66 of 1933.

It is hereby notified for general information that, under and by virtue of the powers in him vested by Section *eighty-five* (2) of the Mines and Minerals Proclamation, 1932 (No. 33 of 1932) of the Bechuanaland Protectorate, His Excellency the High Commissioner has been pleased to appoint the person for the time being holding the office of Magistrate of the Gaberones District to act as Mining Commissioner for the Mining District of the Bakgatla Reserve.

By Command of His Excellency the High Commissioner.

Shirley Eales,
Administrative Secretary.

High Commissioner's Office, Pretoria,
13th May, 1933.

10141/167.

No. 65.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 31st July, 1933.)

(Bechuanaland Protectorate.)
(No. 522.)
(Confidential.)

Sir, High Commissioner's Office, Cape Town, 14th July, 1933.

With reference to your Confidential despatch No. 190 of 30th May* regarding the preferential rights of the British South Africa Company in respect of minerals in the Bechuanaland Protectorate, I have the honour to transmit herewith, for your information, a copy of correspondence with the Resident Commissioner, and a copy of a letter which has been addressed to the General Manager of the Company at Salisbury.

I have, &c.,
H. J. STANLEY,
High Commissioner.

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* No. 62.

Enclosure 1 in No. 65

(Bechuanaland Protectorate.)
(No. 1416.)
(Confidential.)

SIR, High Commissioner's Office, Cape Town, 21st June, 1933.

WITH further reference to my Confidential despatch No. 2477 of 4th January last I have the honour to transmit herewith a copy of a despatch which I have received from the Secretary of State on the subject of the preferential rights of the British South Africa Company in the Bechuanaland Protectorate.

2. You will observe that, while the Secretary of State is of opinion that it would be inopportune to raise the general question of the Company's preferential rights throughout the Protectorate at the moment, he has authorised me to inform Sir D. Chaplin in the terms suggested in paragraph 15 of my despatch No. 745 of 30th December so far as the Ghanzi, Kgalagadi, and Chobe magisterial districts are concerned. I propose to communicate with the British South Africa Company accordingly, but before this is done I should be glad to learn whether you consider that two years would be a reasonable period within which the Company might be required to apply for a Crown Grant over any portion of those districts which may be declared open to public prospecting, or whether, having regard to local conditions in those districts, a somewhat longer period might be allowed.

3. I am inclined to agree with the view expressed in the latter part of paragraph 3 of the Secretary of State's despatch that it seems doubtful whether there would be any advantage in applying the Mines and Minerals Proclamation to the Batswana Reserve in existing circumstances, and I should be glad to know whether you have any observations to offer on this point.

I have, &c.,
H. J. STANLEY,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

Enclosure 2 in No. 65.

(Confidential.)

SIR, Resident Commissioner's Office, Mafeking, C.P., 28th June, 1933.

I HAVE the honour to acknowledge the receipt of Your Excellency's Confidential despatch No. 1416 of the 21st June transmitting a copy of a despatch from the Secretary of State on the subject of the preferential rights of the British South Africa Company in the Bechuanaland Protectorate.

2. I note that the Secretary of State is of opinion that it would be inopportune to raise the general question of the Company's preferential rights throughout the Protectorate at the moment.

3. In regard to the proposed period during which the British South Africa Company should be required to apply for a Crown Grant over the Ghanzi, Kgalagadi, and Chobe Magisterial districts, I am of opinion that the time suggested, viz., two years is reasonable.

4. I see no reason why the Mines and Minerals Proclamation should not be applied to the Batawana Reserve under Section 6 (1); this would intimate to the general public that applications for the issue of Crown Grants under the provisions of the Proclamation would be considered by the Administration, subject, of course, to the preferential rights of the British South Africa Company.

I have, &c.,
R. REILLY
(for Resident Commissioner).

His Excellency
The High Commissioner,
Cape Town.

Enclosure 3 in No. 65.

(No. 1522.)

SIR, High Commissioner's Office, Cape Town, 14th July, 1933.

YOU are doubtless aware that in the sixth paragraph of the letter addressed to me by Sir Drummond Chaplin on the 18th October, 1932, it was stated that the British South Africa Company did not propose, in the exercise of its preferential

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rights in the Bechuanaland Protectorate, to apply for a Crown Grant of mineral rights under Part IV of the Mines and Minerals Proclamation, 1932, in respect of any portion of the Ghanzi, Kgalagadi and Chobe magisterial districts, and that it was therefore competent to the High Commissioner to deal with those districts by way of Crown Grant to other parties or by throwing them open to public prospecting. Sir Drummond added however that the Company considered that the High Commissioner should agree that the Company's preferential rights should revive in those districts if and when any Crown Grant made to another party expires or public prospecting ceases to be allowed, or that he would give the Company the first right to take up any Crown Grant he might be disposed to make in the future on the expiration of any Crown Grant made to another party, or on the withdrawal of the areas or parts of them from public prospecting.

2. In the third paragraph of my letter No. 2194 of the 2nd December last, Sir Drummond Chaplin was informed that the High Commissioner was consulting the Secretary of State and that a further communication on the above-mentioned point would be addressed to him as soon as possible.

3. I am now directed to inform you that the High Commissioner is unable to agree to the request in Sir Drummond's above-mentioned letter that the Company's preferential rights in respect of minerals should be revived in those districts if and when any Crown Grant which might be made to another party expires, or in the event of the withdrawal of the areas or parts of them from public prospecting. I am to say however that, if the Company should desire within a reasonable period of time, say two years from the date on which the districts in question are declared open for public prospecting, to apply for a Crown Grant of mineral rights over any portion of those districts in which claims have not been pegged by other persons, His Excellency would be willing to consider such application for a Crown Grant, and in the event of acceptable terms being agreed upon, to withdraw such portion of Crown land from public prospecting; but that if no such application for a Crown Grant should have been made by the Company within the prescribed period of two years then the High Commissioner considers that the Company's preferential rights to minerals over such areas as have been thrown open to public prospecting should be treated as having been determined.

4. I am to inquire whether the Company have any observations to offer upon this proposed arrangement.

I have, &c.,
SHIRLEY EALES,
Administrative Secretary.

The General Manager,
The British South Africa Company.

10141/169.

No. 66.

DESPATCH
from
HIGH COMMISSIONER, SOUTH AFRICA.
(Received 4th September, 1933.)
[*Answered by No. 72.*]

(Bechuanaland Protectorate.)
(No. 603.)

High Commissioner's Office,
Cape Town, 16th August, 1933.

SIR,

AS you are aware from previous correspondence the two mineral concessions in the Bechuanaland Protectorate, known as the Kanye and Gaseitsiwe Mineral Concessions, held by Balkis, Limited, were duly registered in terms of Section 4 of the Mines and Minerals Proclamation No. 33 of 1932, and Notices of such registration were issued by the Acting Registrar of Deeds and published in the High Commissioner's Official Gazette on the 10th February last.

2. A question has arisen as to the nature and extent of the liability of the Company to pay annual rental to the Government in respect of their prospecting rights under their concessions in terms of Section 31 (1) of the Mines and Minerals Proclamation. In view of the doubts which have arisen as to whether, in view of the circumstance that the Company holds two concessions over the same area, both of which confer prospecting rights and each of which confers a right to select a mining area or areas, the Company may be required, under Section 31 (1) to pay two annual rentals of one shilling per square mile of the area for which it holds prospecting rights, Sir Herbert Stanley thought it advisable that the matter should be referred to you for your consideration, and I transmit to you the accompanying copy of correspondence* with the Resident Commissioner at Mafeking and my Legal Adviser. I also append a copy* of the two concessions and of the Notices of their registration in terms of the Mining Proclamation as issued by the Registrar of Deeds.

3. The Company has contended that it is not liable to pay two rentals to the Government in respect of its prospecting rights and has tendered payment of one rental only, but the Protectorate Authorities, for the reasons explained in the Resident Commissioner's enclosed despatches of the 8th July and the 28th July,* are of opinion that the Company should either pay double rental to the Government or that it should surrender one of its concessions, and it will be seen that Mr. Blackwell in his Minute of the 10th August* has, on reconsideration, supported this view both on legal grounds and from the point of view of equity.

4. The difficulty which has been felt in respect of the proposal that two rentals should be demanded by the Government under Section 31 (1) of the Proclamation is that the rental imposed by that section might reasonably be regarded as a tax leviable in respect of the area over which prospecting rights may be exercised by the holder of the concessions, and not as consideration in respect of the mineral rights granted under the concessions, including in the case of these two concessions the right to select a mining area or areas under each concession. Further, that as the area covered by both concessions is one and the same a demand for the payment of two rentals would be equivalent to the imposition of double taxation. It might also be contended that an argument that two rentals ought to be paid to the Government in respect of the Company's prospecting rights over one and the same area because (*a*) such rights are conferred under two deeds of concession, or (*b*) that two mining areas may be selected, one under each concession, is not well founded, since the consideration payable in respect of the grant of the prospecting and mineral rights under the concessions is due and payable not to the Government but to the Chief and tribe, by whom the concessions were granted and who are the "owner" of the minerals—see the definition of "owner" in respect of land in Native Reserves in paragraph (*a*) of Section 2 (1) of the Proclamation. In this context, it may be mentioned that the consideration payable to the Chief in respect of the grant of the mineral rights in question was fixed in each deed of concession at 5*s.* per month—these rentals, it is understood, were subsequently consolidated at £120 per annum for the two concessions—but from the date of the first selection of a mining area the rental payable to the Chief will be £1 per annum per square mile plus a royalty of 2½ per cent upon the gross value of all precious stones and minerals found or won.

5. On the other hand, it might be urged, with some force, that if these two concessions were held by different parties, each party, the holder of a concession, would be liable to pay to the Government the rental prescribed by Section 31 (1) of the Proclamation in respect of its prospecting rights even though the same area were involved, and that the Balkis Company, having acquired the two concessions, is liable to pay two rentals to the Government in respect of its prospecting rights under each concession notwithstanding that those rights are exercisable over one and the same area.

6. It will be remembered that when the Mining Proclamation was published as a draft in the High Commissioner's Official Gazette of the 16th October, 1931, a memorandum in explanation of certain of its provisions was also published, and that in paragraph 24 of the memorandum it was stated, *inter alia*, that the rental payable under Section 31 of the Proclamation was intended "to compel the holder of a concession to work his minerals," and further, that "the liability to pay this rental must, however, merely be regarded as an inducement to prospect, it being assumed that if minerals are discovered they will be worked." The provisions of Section 32 of the Proclamation were referred to in paragraph 25 of the above-mentioned memorandum.

* Not printed here.

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7. I should be glad to receive an expression of your views on the above matter, and also to learn whether you consider that, as recommended in paragraph 6 of Colonel Rey's despatch of the 28th July,* Section 29 (1) of the Proclamation might be amended by the deletion of the words "sole right to prospect thereon" and the substitution of the words "right to prospect in terms thereof."

I have, &c.,
E. R. G. R. EVANS,
High Commissioner.

10141/170.

No. 67.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 26th September, 1933.)

(Bechuanaland Protectorate.)
(No. 645.)

SIR, High Commissioner's Office, Cape Town, 5th September, 1933.

WITH reference to Sir Herbert Stanley's despatch No. 127 of 15th February last,† I have the honour to enclose, for your information, a copy of the documents on the subject of the negotiations with the Chief and the Bakwena people in connexion with the proposed extension of the British South Africa Company's concessionary rights in the Bakwena Reserve, Bechuanaland Protectorate.

I have, &c.,
E. R. G. R. EVANS,
High Commissioner.

Enclosure 1 in No. 67.

The British South Africa Company,
(Ref. No. 133.) General Manager's Office,
DEAR MR. EALES, Charter House, Salisbury, 31st May, 1933.

WITH reference to the letter dated the 20th December last from Sir Drummond Chaplin to you, and to your reply dated the 23rd *idem*, I have to advise you that negotiations have taken place with the Chief of the Bakwena, and a full meeting of his people, at Molepolole, at which the Assistant Resident Magistrate was present, and, after a prolonged discussion, the following provisional agreement was arrived at:—

The Chief and tribe are prepared to grant to the British South Africa Company:—

(*a*) The right to prospect for and work precious metals and precious stones anywhere in the Reserve (instead of within the area of 100 square miles as provided for in the existing Concession).

(*b*) To peg claims for and to work minerals other than precious metals and stones anywhere in the Reserve.

(*c*) For the additional rights the British South Africa Company shall pay into the Bakwena Tribal Fund a sum at the rate of £200 per annum in addition to the £180 per annum paid under the existing Concession; and Protectorate natives only, as far as possible, shall be employed in the operations.

I shall be glad if you will kindly advise me whether His Excellency the High Commissioner is prepared to approve of such an arrangement, and, if so, I propose to give effect thereto by means of a supplementary agreement, which will be submitted for His Excellency's consideration.

* Not printed here.

† No. 58.

As the original grant is for five years from the 21st October, 1932, six months have already expired, and it is therefore desirable to have the proposed supplementary agreement completed at the earliest possible date.

I might add that the Victoria Prospecting Company is prepared to carry out prospecting operations in the whole Reserve, and has signified its acceptance of the conditions detailed herein.

Yours, &c.,
T. E. ROBINS.

S. Eales, Esq., C.B.E.,
Administrative Secretary,
High Commissioner's Office,
Parliament Street,
Cape Town.

Enclosure 2 in No. 67.

(Bechuanaland Protectorate.)
(No. 1320.)

SIR, High Commissioner's Office, Cape Town, 7th June, 1933.

WITH reference to my despatch No. 202 of the 11th February and previous correspondence regarding the extension of the concessionary rights of the British South Africa Company in the Bakwena Reserve, I have the honour to transmit herewith, for your consideration and observations, a copy of a letter from the General Manager of the Company in South Africa.

2. I should be glad to receive an expression of your views upon the proposed terms of the supplementary agreement which the Company desires to enter into with the Chief and the Tribe.

I have, &c.,
H. J. STANLEY,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate

Enclosure 3 in No. 67.

The British South Africa Company,
General Manager's Office,
DEAR MR. EALES, Charter House, Salisbury, 14th June, 1933

Bakwena Reserve: Supplementary Grant.

MANY thanks for your letter dated 7th June advising me that the Supplementary Grant is now under consideration by His Excellency the High Commissioner.

The Board of the Victoria Prospecting Company has drawn my attention to a point arising out of the last paragraph of my letter to you dated 31st May, and I think that to avoid any misapprehension in the matter I should perhaps explain the position which the Victoria Prospecting Company occupies *vis-à-vis* the proposed Supplementary Grant.

As you are aware the Victoria Prospecting Company has undertaken to prospect in the various Bechuanaland Protectorate areas for a period of eighteen months, which began in August, 1932, with the option to renew their prospecting rights for a further period of two and a half years.

So far no work has been done in the Bakwena Reserve, and in the event of the Company's Consulting Geologist advising against the exercise of the option to extend their present Grant, it is possible that little or no work could be carried out in the Bakwena Reserve before the present Grant terminates next February. The prospecting programme is now under consideration and I hope shortly to be in a position to appreciate how far that programme will take us in the remaining time.

It is not, therefore, strictly accurate to say that, at the moment of writing, the Victoria Prospecting Company is definitely prepared to undertake to prospect the whole of the Bakwena Reserve.

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I have thought that, in order to avoid any misapprehension in this matter, I had better explain the position fully though it does not really affect the proposed supplementary agreement between the British South Africa Company and the Chief which we are asking the High Commissioner to approve.

Yours, &c.,
T. E. ROBINS.

Shirley Eales, Esq., C.B.E.,
Administrative Secretary,
High Commissioner's Office,
Cape Town.

Enclosure 4 in No. 67.

The British South Africa Company,
General Manager's Office,
DEAR MR. EALES, Charter House, Salisbury, 12th August, 1933.

Bakwena Concession.

WITH reference to your letter of 22nd June, I have now received from Mr. W. G. Mason a report of a full meeting which he and the Assistant Resident Magistrate had with the Chief and the Bakwena people at Molepolole on the 3rd August to discuss various points in connexion with the proposed extension of the British South Africa Company's Concession rights in the Bakwena Reserve.

From Mr. Mason's report it would appear that all of the points raised by the Chief and his people were satisfactorily met, and I hope therefore that the proposed amendment of the Grant can now be proceeded with.

Yours, &c.,
T. E. ROBINS.

Shirley Eales, Esq., C.B.E.,
Administrative Secretary,
High Commissioner's Office,
Cape Town.

Enclosure 5 in No. 67.

(No. 5286/2.)

SIR, Resident Commissioner's Office, Mafeking, 19th August, 1933.

WITH reference to Your Excellency's despatch No. 1320 of the 7th June, regarding an extension of the concessionary rights of the British South Africa Company in the Bakwena Reserve, I have the honour to state the Resident Magistrate concerned was instructed to submit for confirmation by the Chief and Tribe the proposed terms referred to in the letter dated 31st May, from the General Manager of the Company, a copy of which accompanied Your Excellency's despatch referred to.

2. It appears that when the proposed terms were agreed to at a meeting between the Company's representative and the Tribe, on the 19th April, Chief Kgari was not present, and the Chief subsequently raised the question as to the advisability of mining being allowed to take place within a radius of 25 miles of Molepolole. This matter, as also the question of possible interference with cultivated lands and the reservation of areas for cattle posts, formed the subject of correspondence between these offices and the Resident Magistrate, the latter being subsequently instructed to arrange for these matters to be discussed in Kgotla at which a representative of the Company should be present.

3. The discussion took place on the 6th August, at which Mr. Mason, the Company's representative, was present, and I am now advised by the Magistrate that the Chief and Tribe have expressed their willingness to grant the Company a supplementary Concession under the following conditions, namely:—

(1) The right to prospect for and work precious metals and precious stones anywhere in the Reserve (instead of within the area of 100 square miles as provided for in the existing Concession).
(2) To peg claims for and to work minerals other than precious metals and stones anywhere in the Reserve.

(3) For the additional rights the British South Africa Company shall pay into the Bakwena Tribal Fund a sum at the rate of £200 per annum in addition to the £180 per annum paid under the existing Concession.

(4) Protectorate natives only, as far as possible, shall be employed in the operations. (This is covered by Section 65 of Proclamation No. 33 of 1932).

The above are the conditions set out in the letter dated 31st May of the British South Africa Company's General Manager. No points of difference were raised in this regard.

(5) To carry on prospecting anywhere in the Reserve but should any minerals be found in or near the Molepolole Stadt the right of allowing the Company to start mining operations would be reserved and would then be brought up for consideration by the Chief and Tribe.

This followed on Chief Kgari's suggestion that no prospecting or mining should take place within a 25-mile radius of Molepolole.

(6) That if and when the Company started mining operations they should have proper compounds for the natives employed there. Also that no natives, or the families of the natives employed at the mines, be allowed to build huts or live near the mine unless there was an old village at or near the place.

4. The Magistrate further advises that the question of the possible interference with lands and cattle posts was also discussed, but on Section 10 and 46 being read out to the people, they said they were quite satisfied that their rights were fully protected and that they did not wish to have any area or areas set aside for the purpose.

5. I see no objection to the Chief and Tribe entering into a Supplementary Agreement embodying the above-mentioned conditions and subject to Your Excellency's concurrence I propose to advise the Company accordingly.

I have, &c.,
C. F. Rey,
Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

(Bechuanaland Protectorate.)
(No. 1969.)

Sir, High Commissioner's Office, Cape Town, 4th September, 1933.

I have the honour to acknowledge the receipt of your despatch No. 5286/2 of the 19th August regarding the negotiations with the Chief and the Bakwena people in connexion with the proposed extension of the British South Africa Company's concessionary rights in the Bakwena Reserve.

2. Subject to further consideration of the point dealt with in paragraph 3 of this despatch, there would not appear to be any objection to a supplementary concession on the lines indicated in paragraph 3 of your despatch being drawn up, but it should be made clear both to the Company and to the tribe that any such Agreement will not become valid until it has received the approval of the Secretary of State.

3. I feel some uncertainty as to the reasons for, or what would be the practical effect of, the proposed stipulation in condition (6) that in the event of mining operations being started "no natives or the families of the natives employed at the mines be allowed to build huts or live near the mine unless there was an old village at or near the place," and I should be glad to receive a further expression of your views with regard to the expediency of this proposed stipulation.

I have, &c.,
E. R. G. R. Evans,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

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10141/172.

No. 68.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 16th October, 1933.)

(Bechuanaland Protectorate.)
(No. 699.)
(Confidential.)

Sir, High Commissioner's Office, Cape Town, 29th September, 1933.

With reference to my Confidential despatch No. 582 of the 4th August,* regarding the preferential rights of the British South Africa Company in respect of minerals in the Bechuanaland Protectorate, I have the honour to transmit herewith a a copy of a letter which has been received from the General Manager of the Company, together with a despatch which I addressed to the Resident Commissioner at Mafeking.

2. I will communicate with you further when I have received the opinion of my Legal Adviser and the views of the Resident Commissioner.

I have, &c.,
E. R. G. R. EVANS,
High Commissioner.

Enclosure 1 in No. 68.

(Ref. No. 1189.)

The Administrative Secretary
to His Excellency the High Commissioner,
Cape Town.

The British South Africa Company, General Manager's Office,

Sir, Charter House, Salisbury, 14th September, 1933.

I have the honour to refer to the General Manager's letter dated the 25th July last to you, in reply to your letter dated the 14th *idem*, on the subject of the British South Africa Company's preferential rights in the Bechuanaland Protectorate.

As stated in the penultimate paragraph of the General Manager's letter above mentioned, the correspondence was referred to London for the consideration of the Directors of the British South Africa Company and I am now instructed to advise you that, with regard to the third paragraph of your letter dated the 14th July last, they take the view that the Crown cannot, consistently with the Company's admitted preferential rights in the Protectorate, determine them in the manner therein suggested.

My Directors consider that the Company has no ground for complaint if, the Company having been given the opportunity to take a Crown Grant and having declined to do so, a Crown Grant is made to a third party, or an area is thrown open to prospecting, and obviously the rights of the Company cannot be deemed to have been infringed if, as a result of any such Crown Grant or Public Prospecting, discoveries are made and enjoyed by third parties. But if the Crown Grant so made should lapse or be abandoned, or if for any reason the area thrown open to public prospecting should be closed, then (except for such rights as might have been established and retained under the said Crown Grant, or as the result of the exercise of his rights by a prospector in any area thrown open to public prospecting), my Directors take the view that the position as it was before the issue of the Crown Grant, or before the throwing open, would be restored, and that the Company's preferential rights would automatically revive in respect of the areas affected.

My Directors express the hope that His Excellency the High Commissioner will be able to concur with the Company's view.

I have, &c.,
T. W. Rooney
(for General Manager).

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* 10141/168: not printed.

Enclosure 2 in No. 68.

Bechuanaland Protectorate.
(No. 2200.)
(Confidential.) High Commissioner's Office,
Cape Town, 29th September, 1933.

SIR

WITH reference to my Confidential despatch No. 1522 of the 1st August on the subject of the preferential rights of the British South Africa Company in respect of minerals in the Bechuanaland Protectorate, I have the honour to transmit herewith a copy of a letter from the General Manager of the Company.

2. I am consulting my Legal Adviser on the matter, but in the meanwhile I should be glad to receive any observations which you may desire to make upon the Company's reply.

I have, &c.,
E. R. G. R. EVANS,
High Commissioner.

His Honour
the Resident Commissioner
of the Bechuanaland Protectorate.

10141/173.

No. 69.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 30th October, 1933.)

(Bechuanaland Protectorate.)
(No. 730.)

SIR, High Commissioner's Office, Cape Town, 10th October, 1933.

WITH reference to my despatch No. 645 of the 5th September,* I have the honour to enclose, for your information, a copy of the documents on the subject of the proposed extension of the British South Africa Company's concessionary rights in the Bakwena Reserve, Bechuanaland Protectorate.

I have, &c.,
E. R. G. R. EVANS,
High Commissioner.

Enclosure 1 in No. 69.

Resident Commissioner's Office, Mafeking, C.P.,
20th September, 1933.

SIR,

I HAVE the honour to acknowledge the receipt of Your Excellency's despatch No. 1969 of the 4th September on the subject of the proposed extension of the Concessionary rights of the British South Africa Company in the Bakwena Reserve.

2. The wording of condition (6) referred to in paragraph 3 of Your Excellency's despatch is that actually agreed upon between the Company's representative and the Chief and Tribe and, according to the report of the Magistrate, who was present at the discussion between the parties, was designed to meet the general concern of the Tribe that, in the event of the formation of new native villages around any mines which may be established, the inhabitants of such villages would have a monopoly as regards supplying wood, *et cetera*, to the Mines. Concern also appears to have been expressed by the Chief that the promiscuous growth of such villages would interfere with his control, as natives would be inclined to desert the old-established villages.

3. I consider that these points could satisfactorily be met by the introduction in the Agreement of a condition to the effect that in the event of the establishment of any mines all natives employed by the Company in connexion therewith shall be housed in compounds of such construction and erected at such places as may be determined by the Resident Commissioner.

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* No. 67

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4. On the other hand, as any suggestion of the deletion of the words of the condition quoted in paragraph 3 of Your Excellency's despatch might result in prolonged discussion and vexatious delay to the Company, I would recommend in these circumstances for Your Excellency's consideration that exception should not be taken to their retention.

I have, &c.,
H. B. NEALE
(for Resident Commissioner).

His Excellency
The High Commissioner,
Cape Town.

Enclosure 2 in No. 69.

Bechuanaland Protectorate.
(No. 2243.) High Commissioner's Office,
Cape Town, 10th October, 1933.

SIR,

I HAVE the honour to acknowledge the receipt of your despatch No. 5286/2 of the 20th September regarding the proposed extension of the British South Africa Company's concessionary rights in the Bakwena Reserve.

2. I note the explanation given in your despatch of the reasons for the inclusion in Condition (6) of the stipulation in regard to the formation of new native villages near any mines which may be established and in the circumstances I am prepared to accept your view.

I have, &c.,
E. R. G. R. EVANS,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

10141/174.

No. 70.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 6th November, 1933.)

[*Answered by No. 71.*]

(Bechuanaland Protectorate.)
(No. 769.)
(Confidential.)

SIR, High Commissioner's Office, Cape Town, 24th October, 1933.

WITH reference to my Confidential despatch No. 699 of the 29th September* on the subject of the preferential rights of the British South Africa Company in respect of minerals in the Bechuanaland Protectorate, I have the honour to transmit herewith a copy of a despatch from the Resident Commissioner submitting his observations on the letter dated the 14th September from the General Manager of the Company, of which a copy accompanied my despatch under reference.

2. Mr. Blackwell, to whom the General Manager's above-mentioned letter and the relevant documents have been referred, has submitted the following observations, viz.:—

> "The reasoning of Mr. Duncan, in his opinion of 5th December, 1932,† with which I entirely concur, and the passage from the despatches therein quoted and relied upon by him, seem in my opinion entirely to negative the "revival" claims of the British South Africa Company as repeated in their last letter of 14th September, 1933, and made in earlier correspondence. Indeed it seems to me to be almost self-contradictory to speak of the revival of a preferential

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* No. 68. † Enclosure 7 in No. 56.

right such as this. The holder of the right is given a species of option. He may, in regard to a given piece of territory, exercise it or not. If he declines to exercise it, and someone else does, he then and thereby loses, once and for all, all his rights over that piece of territory. His preferential rights, after all, are not real rights. They merely confer a "first refusal." It is absurd, therefore, in my opinion, for the Company to claim that this right of the first pick given to them 40 years ago, is of such a character as to entitle them to revive them so as to give them a second pick over territory in respect of which they refuse to exercise their rights in the first instance."

3. It would appear that, notwithstanding the suggested arrangement as set forth in paragraph 15 of Sir Herbert Stanley's despatch No. 745 of the 30th December, 1932,* and communicated to the Company in the letter from this Office of the 14th July (see my despatch No. 522 of the same date),† which would enable the Company to exercise for a further period of two years its preferential rights over areas which it is proposed to throw open to public prospecting, the Company takes the view that the Crown cannot consistently, with the Company's preferential rights in the Protectorate, determine them in the manner indicated, and that if any area thrown open to public prospecting should be closed, or if any Crown Grant which may have been issued should be terminated, the position as it was before the throwing open, or before the issue of the Crown Grant, would be restored, except for such rights as might have been established and retained, and that the Company's preferential rights would automatically revive in respect of the areas affected.

4. I agree generally with the views expressed in the Resident Commissioner's enclosed despatch, and I propose that the Company should now be informed that the view put forward in the General Manager's letter of the 14th September cannot be admitted, and that, subject to facilities being afforded for the exercise of the Company's preferential rights in the manner and within the period indicated in the third paragraph of the Administrative Secretary's letter No. 1522 of the 14th July‡ to the General Manager, such rights in respect of minerals over any area which may be thrown open to public prospecting will be treated as having been determined. If you concur in this procedure, steps can be taken to give effect without further delay to the Resident Commissioner's recommendation for throwing open the Ghanzi, Kgalagadi and Chobe magisterial districts to public prospecting.

5. May I request that, if convenient, your reply should be conveyed to me by telegraph.

I have, &c.,
E. R. G. R. EVANS.
High Commissioner.

Enclosure in No. 70.

(Confidential.)
(No. 682/25.)

The Resident Commissioner's Office,
Mafeking, 9th October, 1933.

SIR,

I HAVE the honour to acknowledge the receipt of Your Excellency's Confidential despatch No. 2200 of the 29th September on the subject of the preferential rights of the British South Africa Company in respect of minerals in the Bechuanaland Protectorate.

2. The Company's view, as expressed in the second paragraph of the General Manager's letter of the 14th September addressed to the Administrative Secretary, a copy of which accompanied Your Excellency's despatch referred to, is tantamount to a claim that such rights may be determined only at the will of the Company. I am unable to agree with this view which is supported by scanty argument, and is at variance with the opinion of Mr. Patrick Duncan as set out in his Minute of the 5th December, 1932, a copy of which accompanied Sir Herbert Stanley's despatch No. 2393 of the 6th December, 1932.

3. The views expressed in paragraph 7 of my despatch of the 10th December, 1932, accord with Mr. Duncan's opinion, and I suggest for Your Excellency's consideration the advisability of informing the Company that, should it fail to exercise its preferential rights in the very generous manner indicated in the letter of the Administrative Secretary addressed to the Company's General Manager on the 14th July, a copy of which accompanied Sir Herbert Stanley's Confidential despatch No. 1532 of that date, such rights shall be deemed to have lapsed, and thereafter

* No. 56. † No. 65. ‡ Enclosure 3 in No. 65.

the mineral rights of the Crown land comprising the Magisterial Districts of Chobe, Ghanzi and Kgalagadi shall be entirely at the disposal of the Crown to be dealt with as provided in the mining law.

4. In view of the present state of the finances of the Territory it is of the utmost importance that every opportunity which the mining law affords for ascertaining and developing its mineral resources should be exercised by the Administration, and I shall be grateful if Your Excellency will deal with this matter accordingly.

I have, &c.,
H. B. NEALE
(for Resident Commissioner).

His Excellency
The High Commissioner,
Cape Town.

10141/174.

No. 71.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 5.50 p.m., 20th November, 1933.)

[*Answered by No. 74.*]

CONFIDENTIAL. No. 126. Your despatch 24th October No. 769.* I concur.—THOMAS.

10141/169.

No. 72.

DESPATCH

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Bechuanaland Protectorate.)
(No. 409.)
(Confidential.)

Downing Street, 23rd November, 1933.

SIR,

I HAVE the honour to acknowledge the receipt of your despatch No. 603 of the 16th August† regarding the extent of the liability of the Balkis Company to pay annual rental to the Bechuanaland Protectorate Administration in respect of their prospecting rights under their concessions.

2. My Legal Advisers agree with the conclusion reached by Mr. Blackwell that on legal grounds the Company should pay double rental to the Government so long as they elect to hold both concessions. Apart, however, from the strictly legal aspect it seems necessary to consider this matter from the point of view of the position of the Chief and also of the question of the Company's claims over the Bamalete Reserve. As regards the first of these points, I may observe that if the Company should prefer to surrender one of its concessions rather than pay a double rental, this would presumably involve a diminution in the sums both at present paid and eventually payable to the Chief; if therefore it were proposed to deal with the matter in the way suggested in Mr. Blackwell's minute of the 21st June, the question would arise whether it would not be necessary to give the Chief an opportunity of expressing his views beforehand. As regards the second point, I would refer to my confidential despatch No. 170 of the 12th May‡ in which it was suggested that it would be desirable to negotiate with the Company for the surrender of their claims over the Bamalete Reserve.

3. The matter has been discussed with Sir H. Stanley during his visit to this country and after careful consideration the conclusion was reached that the best course will be to combine the present question with that of the Company's position

* No. 70. † No. 66. ‡ No. 60.

in the Bamalete Reserve, and to endeavour to negotiate a settlement based on (*a*) the surrender by the Company of its claims in the Bamalete Reserve, and (*b*) a waiver by the Administration of their claim for a double rental in respect of their two concessions, on the understanding that if and when the Company exercise their right to select a mining area or areas under one of the concessions, they will continue to be liable to pay the existing rental on the remaining concession until they have completed the selection of areas to which they are entitled in respect of the two concessions, whereupon rental will only be payable, under Section 32 of the Mines and Minerals Proclamation, in respect of the selected areas. I should be glad if you would approach the Balkis Company on these lines.

4. I agree with the suggestion referred to in the last paragraph of your despatch that Section 29 (1) of the Mines and Minerals Proclamation should be amended by the deletion of the words "sole right to prospect therein" and the substitution of the words "right to prospect in terms thereof." I would suggest, however, that you should inform the British South Africa Company of this proposal before an amending Proclamation is issued.

I have, &c.,
J. H. THOMAS.

10141/177.

No. 73.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 11th December, 1933.)

(Bechuanaland Protectorate.)
(Confidential.)
(No. 852.) High Commissioner's Office,
Cape Town, 21st November, 1933

SIR,

WITH reference to your despatch Confidential No. 170 of the 12th May* on the subject of the mineral concessions held by the Balkis Company in the Bechuanaland Protectorate, I have the honour to transmit herewith a copy of a letter which has been addressed to the local representative of the Company regarding the proposed offer to the Company of a Crown Grant of minerals over a portion of Crown land in the Bechuanaland Protectorate in return for the relinquishment of any rights which they may claim to exercise over the Bamalete Native Reserve. I also enclose a copy of a despatch from the Resident Commissioner of the Bechuanaland Protectorate expressing his concurrence in the terms of the letter.

2. With regard to the preferential rights of the British South Africa Company, I enclose a copy of correspondence with the late Sir Drummond Chaplin in which it is recorded that the Company does not desire to apply for a Crown Grant of minerals over the area of Crown land referred to above.

I have, &c.,
E. R. G. R EVANS,
High Commissioner.

Enclosure 1 in No. 73.

(No. 2722.) High Commissioner's Office,
Cape Town, 17th November, 1933.

SIR,

I AM directed to advert to the application which was made by the London Office of Balkis, Limited, in 1926 for the grant of prospecting and mining rights over an area of Crown land in the Bechuanaland Protectorate lying to the north of the Molopo River and to the west of the Baralong farms. I enclose for convenience of reference, a copy of a letter, dated the 16th March, 1926, in which the application was submitted by your Company to the Secretary of State for the Colonies, and of a sketch plan showing approximately the area in question (coloured blue).

2. At the time this application was received a mining law for the Protectorate had not been issued, and there was no legislative provision for the grant of mineral

* No. 60.

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rights in Crown lands. Provision has however now been made in Part IV of the Bechuanaland Protectorate Mines and Minerals Proclamation No. 33 of 1932 (print attached) under which the High Commissioner may confer an exclusive right to prospect and mine upon any area of land by means of a Crown Grant.

3. If your Company should now desire to renew their application for a grant of mineral rights in respect of the area above referred to, and subject to such terms and conditions as might be mutually agreed upon, His Excellency would be ready to give consideration to any application for a Crown Grant which they might submit. It is suggested that the conditions of any such Grant, if application therefor should be made, should include a stipulation to the effect that any mining rights held by your Company over certain parts of the Protectorate by virtue of any existing concession granted by the former Chief of the Bangwaketsi do not extend or apply to any portion of the Bamalete Native Reserve. In this context, I am to say that the Chief of the Bamalete Tribe maintains the view, which he expressed some years ago, that concessionary rights granted by the Chief of the Bangwaketsi do not include and are not applicable to the Bamalete Reserve, and I am to add that the Mines and Minerals Proclamation of 1932 has not been applied to that Reserve.

4. It would be convenient if any proposals for a Crown Grant of Minerals of the nature indicated in the preceding paragraph could be addressed to the Government Secretary of the Bechuanaland Protectorate at Mafeking.

I am, &c.,
SHIRLEY EALES,
Administrative Secretary.

D. P. C Blair, Esq.,
P.O. Box 1917,
Johannesburg.

Enclosure 2 in No. 73.

(No. 5277/2.) Resident Commissioner's Office,
Mafeking, C.P., 11th November, 1933.

SIR,

I HAVE the honour to acknowledge the receipt of Your Excellency's Confidential despatch No. 2154 of the 16th October transmitting a draft of a letter which Your Excellency suggests might be addressed to Balkis, Limited, on the subject of the relinquishment by that Company of any mining rights which, under its Mineral Concessions it may claim to have in the Bamalete Reserve, in consideration of the issue of a Grant under Section 35 of the Mines and Minerals Proclamation, 1932, in respect of a certain area on Crown land.

2. I note from the copy of the correspondence with Sir Drummond Chaplin which accompanied Your Excellency's despatch that the British South Africa Company, in the exercise of its preferential rights, does not desire to apply for a Crown Grant over the area referred to, and I concur in the despatch to the Balkis Company of the suggested letter, the terms of which I consider embody the views of the Secretary of State as expressed in his despatch Confidential No. 170 of the 12th May, a copy of which was transmitted with Your Excellency's despatch Confidential No. 1311 of the 14th June.

3. I would suggest, however, for Your Excellency's consideration, an additional paragraph to the draft letter to the effect that, in the event of the Company being desirous of renewing its previous application, its proposals regarding the terms and conditions of the Crown Grant should be submitted through this Office.

I have, &c.,
C. F. REY,
Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

Enclosure 3 in No. 73

(No. 1472.)
DEAR SIR DRUMMOND, Cape Town, 1st September, 1933.

AS I mentioned to you in conversation, the High Commissioner would be glad to know whether the British South Africa Company, in the exercise of its preferential rights, desires to apply for a Crown Grant of minerals, under Section 35 of the Mines

and Minerals Proclamation, 1932, over the area of Crown land in the Bechuanaland Protectorate lying to the north of the Molopo River and to the west of the Baralong farms as shown approximately in the accompanying sketch (coloured blue).

Yours, &c.,
SHIRLEY EALES.

Sir Drummond Chaplin, G.B.E., K.C.M.G.

Enclosure 4 in No. 73.

The Rhodesia Chartered Agency, Limited,
Cape Town, 12th September, 1933.

DEAR MR. EALES,

WITH reference to your letter No. 1472 of the 1st instant, I have to inform you that the British South Africa Company does not desire, in the exercise of its preferential rights, to apply for a Crown Grant of Minerals over the area mentioned in your letter.

Yours, &c.,
DRUMMOND CHAPLIN.

S. Eales, Esq.,
Administrative Secretary,
High Commissioner's Office, Cape Town.

10141/178.

No. 74.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 11th December, 1933.)

(Bechuanaland Protectorate.)
(No. 864.)
(Confidential.)

SIR, High Commissioner's Office, Cape Town, 24th November, 1933.

I HAVE the honour to acknowledge the receipt of your Confidential telegram No. 126 of the 20th November* on the subject of the preferential rights of the British South Africa Company in respect of minerals in the Bechuanaland Protectorate.

2. I enclose herewith, for your information, a copy of a letter which I have caused to be addressed to the General Manager of the Company, and a copy of a despatch to the Resident Commissioner.

I have, &c.,
E. R. G. R. EVANS,
High Commissioner.

Enclosure 1 in No. 74.

(No. 2769.)

SIR, Cape Town, 24th November, 1933.

WITH further reference to your letter No. 1189 of the 14th September on the subject of the preferential rights of the British South Africa Company in respect of minerals in the Bechuanaland Protectorate, I am directed by His Excellency the High Commissioner to inform you that the view put forward in your above-mentioned letter cannot be admitted, and to state that, subject to facilities being afforded for the exercise of the Company's preferential rights in the manner and within the period indicated in my letter to you No. 1522 of the 14th July, such rights in respect of minerals over any area which may be thrown open to public prospecting will be treated as having been determined.

I am, &c.,
SHIRLEY EALES,
Administrative Secretary.

The General Manager,
The British South Africa Company.

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* No. 71.

Enclosure 2 in No. 74.

(Bechuanaland Protectorate.)
(No. 2769.)
(Confidential.)

SIR, High Commissioner's Office, Cape Town, 24th November, 1933.

WITH reference to my Confidential telegram No. 257 of to-day, I have the honour to transmit herewith a copy of the telegram which I received from the Secretary of State on the subject of the preferential rights of the British South Africa Company in respect of minerals in the Bechuanaland Protectorate, together with a copy of a letter which I have caused to be addressed to the General Manager of the Company.

2. As intimated in my telegram under reference steps may now be taken for throwing open the Chanzi Kgalagadi and Chobe districts to public prospecting.

I have, &c.,
E. R. G. R. EVANS,
High Commissioner.

His Honour
The Resident Commisioner
of the Bechuanaland Protectorate.

(b) Suspension and Reinstatement of Tshekedi Khama, Acting Chief of the Bamangwato.

20283/33.

No. 75.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 12.54 p.m., 8th September, 1933.)

[*Answered by No. 76.*]

No. 89. 8TH SEPTEMBER. Following for Harding from Eales:—

Begins:—Resident Commissioner, Bechuanaland Protectorate, has informed me by telephone this morning that on 6th September Chief Tshekedi in Kgotla ordered a European named McIntosh to be flogged for assault on a native. No information regarding the matter reached the Magistrate at Serowe until flogging had been inflicted. I understand Tshekedi admits having acted in this way. Magistrate has called upon him for report. Europeans are not of course subject to the jurisdiction of the Native Court, see Section 10 of Proclamation of 10th June, 1891, and Chief has therefore broken the law.

At Rey's request I am leaving here for Pretoria this afternoon, Friday, arriving there Sunday, 10th September, to confer with the High Commissioner and Rey as to action to be taken. Legal Adviser will accompany me.

Chief could presumably be tried for assault, but having regard to seriousness of offence and bearing in mind state of public feeling in South Africa in the matter between Europeans and natives strong administrative action may have to be taken. It may be necessary to suspend Tshekedi immediately from exercise of functions of Acting Chief and order him to leave Bamangwato Reserve under powers conferred upon the High Commissioner by Proclamation No. 15 of 1907.

If it is desired to make any communication to the High Commissioner before conference with Rey takes place on Sunday I should be obliged if telegrams could be addressed to Pretoria to-morrow.—*Ends*.

20283/38.

No. 76.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 7 p.m., 8th September, 1933.)

No. 74A. Your telegram No. 89 of 8th September.* Following for Eales from Whiskard :—

Begins :—Secretary of State who is away will be in London for one day on Monday and it would be a great convenience to have as early as possible on that day a report of conference with High Commissioner and Rey on Sunday. Report should include any information available as to character of alleged offence of McIntosh and any explanation which may have been given by Tshekedi.—*Ends.*

20283/39.

No. 77.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 3.35 a.m., 11th September, 1933.)

[*Answered by No.* 81.]

No. 91. 10TH SEPTEMBER. On the 7th September, Magistrate, Serowe, reported that on the 6th September European named P. W. McIntosh had been flogged in Kgotla by order of Tshekedi in execution of judgment of Chief's Court in connexion with assault on native village. Chief failed to report to the magistrate before taking action and it was only after flogging had taken place that the magistrate heard indirectly of the occurrence.

Chief furnished the following statement dated 6th September to the magistrate :—

Begins :—Just as you rang me up I was writing a report in connexion with steps I was obliged to take in my Kgotla this morning and enclosed Circular letter which you will please send round to the responsible European resident of Serowe will explain my attitude with regard to corporal punishment I ordered on young Phean McIntosh.

With regard to your question as to whether corporal punishment was given to the said Phean McIntosh in my Kgotla this morning I have to state that I ordered it to be given. But unfortunately it was not administered in the way I should have liked. When Phean was ordered to receive his sentence he made a dash at me, but before he could get to where I sat a number of people caught him to stop him, and I cannot say whether he was badly handled or not. I can only say that Rose, who caught hold of Phean, were ordered to leave him, and after this did not receive any cuts.

You are no doubt that time and again I have exchanged correspondence with the Resident Magistrate in connexion with disturbance that Phean McIntosh, Tom McIntosh, and Henry McNamee have been causing in the village, and I was asking the Magistrate to find means of giving a check to such conduct, but Magistrate was unable to find an effective solution to deal with the ever-growing and unbecoming conduct of above-mentioned lads. In fact they are entirely at large to act as they please.

These lads have gone to the extent of assaulting native people; native girls have been put in the family way by them; native beer is brewed by native girls for them, and they actually live in native huts in the village; in short they live like natives entirely and are only white by birth.

I am forced to give a check of some kind to this sort of thing, and after listening at a great length to charges brought against Phean and his defence before I gave out above order I told Phean that it gave me pain to have to

* No. 75.

punish him in the way I was to do because Phean was a white lad, but as he did not live the life of a white man, neither that of a native, some solution to correct his actions had to be found.

I may have no jurisdiction in cases where white people and natives are concerned, but my decision was given in the interests of real and substantial justice and for good administration of the tribe, and I think this was only proper for me to do.

I have always treated all white people with respect no matter what their stations in life are, and action I took this morning was both in interests of administration and judicial course.—*Ends.*

Circular letter referred to signed by chief reads as follows :—

Begins :—To the European Resident of Serowe. You may hear rumours that I had occasion to give corporal punishment to young Phean McIntosh in my Kgotla this morning, and I wish to give you first-hand information on the matter.

Several times cases have been brought to my Kgotla in which either or all of the following lads—Phean McIntosh, Tom and Henry McNamee—were involved. Such were cases of assault by these lads on native people, complaints by girls or their parents about young native girls who have been put in the family way by these lads; these lads openly have native beer brewed for them in village. Their actions are too numerous to be numbered, and I think their behaviour in the village is well known and need no explanation.

This morning a case was brought before me in which Phean badly assaulted one native lad who happened to talk to one native girl with whom Phean is in love. After listening at some length to evidence against Phean McIntosh and also to his defence I was compelled to give corporal punishment to Phean in the interests of justice and administration. However, before such corporal punishment could be given Phean made a dash at me and (word omitted) caught hold him to stop him, and I do not know whether he was badly handled or not. I stopped the people from doing him hard (? harm), and after this nothing was done to Phean in the way of punishment. It has always been my principle to treat my white residents with respect no matter what their stations in life are. The lads in question have assisted in causing disturbance amongst some people and punishment ordered this morning was given with no malice but with determined effort of giving a check to this trouble and unbecoming influence.—*Ends.*

It appears from correspondence which passed between the Chief and Magistrate in March and April last that the Chief had at that time appealed to the Magistrate to take action against P. W. McIntosh and McNamee for cohabiting with native women. Magistrate advise the Chief to send the women to their homes and to tell McIntosh and McNamee that their presence in Serowe was undesirable. Chief stated that he thought it was for the Magistrate to take immediate definite (? action omitted) against Europeans and offered his assistance, and he added that merely removing them from Serowe meant that they would settle in outside villages. Magistrate sent for McIntosh and severely rebuked him and warned him that he would be put out of the native reserve, and he told the Chief that it was for him to deal with the native women. Chief requested that the matter should receive further consideration, but no further action appears to have been taken. Correspondence in question was not forwarded to the Resident Commissioner, and no report was made to him by the Magistrate nor does the Chief appear to have requested that the matter should be brought to the notice of Resident Commissioner or the High Commissioner.

Quite apart however from the question of behaviour of McIntosh and other Europeans it is clear that Tshekedi was fully aware that he had no right to try or punish any European, and it is imperative that immediate action to deal with this aspect of the matter should be taken.

Tshekedi's act was deliberate. In fact he allowed one month to elapse after alleged offence had been committed, and his conduct must be regarded as a challenge to the authority of the Government. Moreover, having regard to strong feeling amongst all sections of European community in South Africa in matters of this kind failure on our part to take effective measures would inevitably have serious consequences and might lead to public demand that the Union Government should intervene.

I have therefore under powers conferred by Proclamation No. 30 of 1933 appointed Neal, Acting Assistant Resident Commissioner, and Nettelton, Resident Magistrate, to be a Commission of Inquiry into the occurrence at Serowe, on 6th September. Tshekedi, who left for Nata on the evening of 6th September, has

returned to Serowe on instructions from Resident Commissioner. Inquiry will be held Palaype Road on 13th September, and Tshekedi and all witnesses have been required to attend. At the Chief's request it has been arranged for advocate Buchanan to proceed from Capetown to-morrow to advise the Chief at the Inquiry.

Pending Inquiry and my decision thereafter I have ordered suspension of Tshekedi from exercise of functions of Chieftainship, and have instructed Resident Commissioner to issue orders under Proclamation No. 15 of 1907 directing Tshekedi to confine himself to the Government of Camp at Palaype Road during the pleasure. These orders will be served on the Chief on 13th September.

I propose to proceed to Palapye Road to receive report of the Commission and then to proceed to Serowe same day to give my decision in Kgotla there. Meanwhile I consider it absolutely necessary to make demonstration, and I have arranged for armed naval escort to leave Capetown at once for Palapye Road to await my arrival there. Union Government are giving every facility for transport and immediate despatch of Minister of Defence, with whom I have been in consultation, was most anxious to assist. I consider, however, that it is of particular importance that Royal Navy should provide armed escort and not Union or Rhodesian Government. I am anxious also not to risk giving offence by refusing the assistance of Union forces and accepting help from Rhodesia. I consider it most important also that there should be demonstration of force showing Imperial authority is able to take action to protect that life and property in the Bechuanaland Protectorate should this become necessary. Immediate action is called for otherwise very serious situation might easily develop.

I shall remain at Pretoria until Wednesday evening, 13th September and proceed to Palapye Road by aeroplane.—HIGH COMMISSIONER.

20283/41.

No. 78.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 12.37 p.m., 11th September, 1933.)

No. 92. 11TH SEPTEMBER. My telegram of 10th September, No. 91.* Magistrate at Serowe received representations yesterday from two leading European residents of that town asking that protection be provided for their families in view of local situation. Magistrate has replied with my approval that the administration is fully alive to its responsibilities.—HIGH COMMISSIONER.

20283/40.

No. 79.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 11.30 a.m., 11th September, 1933.)

[*Answered by No. 80.*]

No. 93. 11TH SEPTEMBER. I request that the services of Mr. Liesching may be placed at my disposal so that I can appoint him as an additional member of the Commission at Administrative inquiry to verify what took place at Serowe on 6th September. Anticipating your approval I have instructed Mr. Liesching to leave Pretoria for Palapye Road this evening.—HIGH COMMISSIONER.

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* No. 77.

20283/40.

No. 80.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 1.35 p.m., 11th September, 1933.)

No. 76. YOUR telegram 11th September, No. 93.* I approve appointment of Liesching as member of Commission.—THOMAS.

20283/39.

No. 81.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 5.15 p.m., 11th September, 1933.)

[*Answered by No. 82.*]

No. 77. YOUR telegram No. 91 of 10th September.† I am seriously disturbed at situation which has arisen and shall await with anxiety your further report.

I note that you have appointed Commission of Inquiry under Proclamation No. 30 of 1933. I assume that in its inquiry Commission will include examination of charges made by Tshekedi against Europeans concerned and also alleged failure of Resident Magistrate to take action in the matter, and that if inquiry should show that there is *prima facie* evidence of criminal offences having been committed by Europeans prompt and adequate measures will be taken to ensure trial and in the event of conviction, punishment.

While I fully appreciate considerations relating to feeling amongst all sections of European community in South Africa referred to in your telegram, I cannot too strongly emphasize deplorable effect which might be created here by anything which might be construed as laxity on the part of the Administration in dealing with offences against natives committed by Europeans.

I am glad to note that you have taken the necessary steps to ensure that the Chief shall be adequately advised.

I shall be glad to receive summary of report of Commission of Inquiry together with your recommendations thereon by telegram as soon as possible. I fully appreciate necessity for prompt action, but at the same time in view of very important issues involved I would ask you to keep in closest consultation with me.

I note that you have deemed it necessary to arrange for a naval detachment to proceed to Palapye Road. Whilst fully appreciating the considerations urged in your telegram I am sure you will not be unmindful of the paramount importance of avoiding any action which may lead to the use of force.—THOMAS.

20283/44.

No. 82

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 11.10 a.m., 12th September, 1933.)

[*Answered by No. 83.*]

No. 96. 12TH SEPTEMBER. Your telegram of the 11th September, No. 77.‡ As regards inquiry I have informed the Resident Commissioner that its scope should include investigation of all the circumstances connected with certain unlawful acts alleged to have been committed by Acting Chief Tshekedi or by any other person who may be concerned.

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* No. 79. † No. 77. ‡ No. 81.

Question of prosecution of any person or persons against whom there may be *prima facie* evidence of their having committed a criminal offence will receive careful consideration.

I should strongly deprecate inclusion within the scope of the Commission inquiry as to the alleged failure of the Magistrate to take action on the Chief's earlier representations. I will, however, ascertain the Resident Commissioner's views as to what steps, if any, should be taken administratively.

Summary of Report of Commission will be telegraphed to you together with my observations as soon as possible, and I will of course keep you promptly and fully informed of any developments.

I received yesterday from Cape Town message from Buchanan to the effect that he proposes to advise Tshekedi to reiterate his unabated allegiance to the King to apologise to the High Commissioner in whatever way I may desire and to leave it to my discretion what punishment should be inflicted and to abide by my decision. Buchanan emphasized that he was convinced that the Chief would accede to any request without the use of force.

If Buchanan carries out his intention of advising the Chief in this sense and if the Chief acts upon his advice—on which I know he greatly relies—I do not anticipate serious difficulty in arriving at satisfactory solution.

You may be assured that I have very much in mind paramount importance of avoiding any action which might lead to the use of force.—HIGH COMMISSIONER.

20283/44.

No. 83.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 3.5 p.m., 12th September, 1933.)

No. 79. YOUR telegram No. 96 of 12th September.* If there is any truth in the allegations made by Tshekedi against Europeans it is certain that a decision which dealt solely with Tshekedi's action would create a deplorable effect in this country, and I therefore regard it as important that announcement of decision, whenever it is made, should cover not merely case of Tshekedi but also if any ground for action is disclosed case of Europeans as well.

Similarly if in your opinion there is ground for action of any sort in the case of the Resident Magistrate it is desirable if possible that such action should be taken, and any announcement which may be necessary should be made simultaneously with announcement of decisions as to Tshekedi and Europeans.

Subject to above I am prepared to agree that terms of reference to Commission need not specifically include inquiry into conduct of Magistrate. But I assume that I shall receive from you at same time as summary of report of Commission your recommendations as to action to be taken in case of Europeans and Magistrate as well as in case of Tshekedi.

I am glad to learn of message you have received from Buchanan.—THOMAS.

20283/45.

No. 84.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 11.24 a.m., 13th September, 1933.)

No. 97. 13TH SEPTEMBER. Am leaving to-day by air for Palapye Road to receive Commission's report and to meet Tshekedi and tribe in Kgotla at Serowe on 14th September. Eales accompanies me.

Please address any further telegrams for me to Cape Town. Office there has been instructed to forward any messages as quickly as possible.—HIGH COMMISSIONER.

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* No. 82.

69

20283/46.

No. 85.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 3.24 p.m., 14th September, 1933.)

[*Answered by Nos. 86 and 87.*]

No. 98. 14TH SEPTEMBER. Following is summary of report of Commission of Inquiry. Nettelton did not take part in proceedings, having requested leave to withdraw on the ground that he might have been connected with the matters within the scope of the Inquiry.

Evidence showed that McIntosh was summoned to appear before the Acting Chief's Court, was tried, sentenced, and flogged. Chief admitted trying the case and giving the sentence. His defence was (1) that McIntosh was bad character, lived amongst the tribe as native, interfered with native girls, and had immoral relations with them and that his (Chief's) action was justified. (2) That he was immune from Section 10 of the Proclamation of the 10th June, 1891, as amended by Proclamation 17 of 1922.

Commission considered that the conduct of McIntosh and certain other Europeans was deplorable in its effect on the tribe but no evidence was forthcoming up to the time of assault by McIntosh on native that any offences had been committed which could be made basis of criminal charge and in the case of assault referred to no complaint had been made. Commission recommended that McIntosh should be expelled from the Native Reserve.

Commission stated in public proceedings their conclusions and intended recommendations as set forth in preceding paragraph

Commission found that McIntosh was tried, convicted, and flogged in the Chief's Kgotla and that this was done deliberately by Tshekedi, who was fully aware that as a native Chief he had no jurisdiction. Separate inquiry by the Resident Commissioner and Liesching into alleged failure by the Administration to take action upon the representations made by the Chief was subsequently held. This inquiry was not public, but the Chief was present accompanied by his legal advisers. Report does not disclose any grounds for action against the Magistrate.

I have carefully considered both Reports and the question of the action to be taken in consultation with the Resident Commissioner, Eales, Neale, and Liesching. Chief's attitude as disclosed by the Inquiry that he was entitled to try in his Court and punish a European and his claim that he is immune from the Law prohibiting Native Courts from dealing with Europeans makes it impossible to deal with him by fine and rebuke. I have therefore decided (1) to suspend him from Chieftainship during His Majesty's Majesty's pleasure, (2) to order him to live in the Tati District during His Majesty's pleasure, (3) to direct the Tribe to nominate in his place an acting Chief and Council. As regards Europeans I have ordered McIntosh and McNamee to be expelled from the Bamangwato Reserve and excluded from all other Native Reserves.

My decisions both as regards Tshekedi and Europeans will be announced at Serowe at noon to-day. I return to Johannesburg this afternoon, Thursday, and expect to arrive Cape Town 16th September.—HIGH COMMISSIONER.

20283/46.

No. 86.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 1.18 p.m., 15th September, 1933.)

No. 81. I THANK you for your telegram No. 98* of the 14th instant. I should be glad if you would send me full report of inquiry and evidence including separate inquiry into action of magistrate and also of proceedings in Kgotla by earliest air mail.—THOMAS.

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* No. 85.

20283/46.

No. 87.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 1.40 p.m., 15th September, 1933.)

[*Answered by No.* 90.]

No. 82. YESTERDAY's evening papers here stated on strength of very specific message from Reuters that Tshekedi had been deposed and not merely suspended. On receipt of your telegram No. 98* I caused steps to be taken to ensure correction of this false impression and to-day's morning papers give the correct version.

It looks, however, from quotations from South African Press published here this morning as though incorrect version were also prevalent in South Africa.

I regard it as of the greatest importance that it should be clearly understood in South Africa both by natives and Europeans that your order does not involve deposition but temporary suspension until such time as whole case can be fully considered here. It would also be desirable without of course in any way prejudicing my final decision to suggest that duration of suspension may well turn to some considerable degree on maintenance or abandonment by Tshekedi of his claim that provisions prohibiting native Court from dealing with Europeans do not apply to Bamangwato.

Please take such steps as you can to ensure that these points are fully appreciated in South Africa.

I should be glad also to receive telegraphic summary of evidence and report of separate inquiry into alleged failure of administration to take action upon representations made by Chief as this aspect of the case is already subject of comment in Press here.—THOMAS.

20283/48.

No. 88.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 2 p.m., 16th September, 1933.)

[*Answered by No.* 92.]

No. 83. I AM receiving numerous inquiries as to statement you are reported to have made at Serowe that you had previously had to reprove Tshekedi since assuming office as High Commissioner. I should be glad to have details of case referred to for my personal information and also if you see no objection for such public use (if any) as may seem desirable.—THOMAS.

20283/52.

No. 89.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 6.16 p.m., 17th September, 1933.)

No. 99. 17TH SEPTEMBER. Following is text of my announcement at Serowe on 14th September:—

Begins:—Tshekedi Khama. As His Majesty's High Commissioner I have come here to address you before your people. You have been Acting Chief during the minority of Seretse, who is the hereditary heir to a great tribe mainly kept great by your father and Seretse's grandfather Khama.

* No. 85.

70

Although you are known to be a decent clean-living man, clever, and a man of education and great intelligence, you have frequently flouted the Administration while professing loyalty and allegiance to the King in whose name I appear here to-day.

You admit flogging a European after judging him in your own Kgotla, knowing full well that you had no legal right to do this and no jurisdiction over him.

Your duty as Acting Chief was to set a good example.

You have not set a good example.

You have set a very bad example to your tribe and to other Chiefs.

I have already had to reprove you in the short time that I have held the office of High Commissioner although you made full and proper apology.

A very great deal of trouble has been taken in your case in order that you should have full justice, and that any extenuating circumstances regarding your action in flogging this European should be taken into consideration.

Very thorough inquiry has been made as to your character, and also as to the way in which you yourself have studied the interests of your people.

From these inquiries it appears that you are an extremely capable Acting Chief, quite able to deal with your people and to lead them, but it appears that your overmastering passion is your selfishness and your study of your own personal rights and privileges.

You have not always acted in the interests of your people nor have you worked in harmony with the Administration, and without this harmony and co-operation the Administration to which you profess allegiance cannot hope to function.

I may tell you that your action in flogging a European has aroused general indignation, notwithstanding character of the European you flogged.

I am satisfied that man is not a fit person to live in Native Reserve, and I have this day given orders for this man and one other to be ordered out of Native Reserve. If they reappear in this Reserve they will be punished according to the law.

In addition to other punishment normally you would have been fined 300 head of cattle. I shall not inflict this fine, but for deliberate and flagrant violation of Protectorate law, well known to you, I shall suspend you from exercise of function of Acting Chief at His Majesty's pleasure and you will not be allowed to reside in Bamangwato Reserve.

Tshekedi Khama I direct that you shall reside at His Majesty's pleasure in Tati District excluding Native Reserve.

Your tribe must now return peaceably to their homes and in due course elect an Acting Chief in your place and a Council to work with him.

The name of the Acting Chief is to be submitted to me as High Commissioner for approval, and names of Council to Resident Commissioner for his approval.

Finally, to you, men of Bamangwato Tribe, I call upon you in the name of His Majesty to conduct yourselves well and in accordance with customs and best traditions of the great tribe to which you belong.

In conclusion I wish to impress upon you necessity to work loyally with Administration, and to follow advice and guidance of Resident Commissioner and his officers.—*Ends*.—HIGH COMMISSIONER.

20283/54.

No. 90.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 6.40 p.m., 17th September, 1933.)

No. 101. 17TH SEPTEMBER. Your telegram 15th September, No. 82.* As full text of my decision at Serowe (see my telegram No. 99 to-day)† was published in Press here on 14th September it was made quite clear that Tshekedi was suspended

* No. 87. † No. 89.

during His Majesty's pleasure and not "deposed." I have, however, issued to Reuter for publication a statement which should remove any misapprehension on the point if such exists.

Report of separate inquiry into alleged failure of administration to take action on representations made by Chief had to be submitted to me in draft for consideration on evening of 13th September at Palapye Road, and copying of report with transcript of evidence could not be completed before I left Palapye Road for Serowe and thence by air for Johannesburg on 14th September. I hope to send to you by telegraph to-morrow summary of evidence and of report.

Resident Commissioner has reported that Tshekedi arrived Francistown on 16th September. Tribe have nominated Serogola as Acting Chief temporarily until decision of full tribal meeting which they have agreed to call for 11th October. Situation at Serowe quiet and Magistrate was satisfied with Kgotla meeting yesterday and position generally. Resident Commissioner has arranged for the naval escort to leave to-morrow 18th September. He himself left Palapye Road early this morning and is due to arrive at Mafeking this afternoon, Sunday.—HIGH COMMISSIONER.

20283/55.

No. 91.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 6.40 p.m., 17th September, 1933.)

[*Answered by No. 94.*]

No. 102. 17TH SEPTEMBER. Buchanan has applied on behalf of Tshekedi to proceed to England as soon as possible to lay his case before you in person. I have instructed Resident Commissioner, Bechuanaland Protectorate to inform both Tshekedi and Buchanan that request is being submitted to you by telegraph and that reply will be sent to Tshekedi as soon as your answer is received.

The Resident Commissioner, Bechuanaland Protectorate, considers that whether or not request is granted permission should not be given until all documents in connexion with the case have been received and considered by you. I have no objection to Tshekedi's request being granted, but it would, I think, be advisable in the event of permission being given, that his departure from South Africa should be postponed at any rate until 29th September in order that you may be able to receive my full report and all relevant documents before he arrives in England.

It will not, I fear, be possible for my full report to be sent by air mail which closes here 19th September, but I hope it may be despatched so as to reach you not later than 7th October or 9th October.—HIGH COMMISSIONER.

20283/56

No. 92

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 6.55 p.m., 17th September, 1933.)

No. 103. 17TH SEPTEMBER. Your telegram dated 16th September No. 83.* Incident for which I previously had to reprove Tshekedi was that after he had been advised to transmit representations regarding draft native legislation through Resident

* No. 88.

Commissioner, Bechuanaland Protectorate, he sent request direct to my office at Cape Town for transmission representations intended for you by means of telegram addressed from himself and Bathoen to High Commissioner in London (Sir Herbert Stanley) instead of through Resident Commissioner, Bechuanaland Protectorate and me, and that after mistake in procedure had been pointed out to him by Resident Commissioner, Bechuanaland Protectorate, he persisted in his request.

Report as to this was transmitted to you in my despatch of 8th September No. 648* (sent by ordinary mail due London 25th September) and my despatch of 11th September No. 650† (sent by air mail due London 23rd September).

For the details of the origin and nature of the incidents which led to reproof see Eales' letters to Tait 1975 25th August and 1984 29th August.‡ Difficulty was eventually overcome following upon unofficial conversation on 2nd September between Eales and Buchanan who (at Eales' suggestion) advised the Chief to ask Resident Commissioner that proposed telegram addressed to "High Commissioner, London." should be treated as a communication transmitted through the Resident Commissioner to me for submission to you by cable, and to express regret that incorrect procedure had been inadvertently adopted. Chief acted on this advice immediately when given to him by Buchanan, and as Resident Commissioner thereupon informed me on 4th September that reprimand was no longer necessary. I withheld despatch which I had written to Resident Commissioner earlier on that day conveying reproof. Subsequently on 9th September I decided after oral consultation with Resident Commissioner that it would be advisable to reprove Chief for his conduct in attempting to transmit his representations through an incorrect channel, and terms of my despatch conveying reproof (which I had withheld) were transmitted to Mafeking for communication to Chief at Serowe.

I did not communicate Chief's representations regarding draft native legislation to you by cable, firstly, because Resident Commissioner was anxious that his comments thereon should go forward at the same time; and secondly, because copy of Chief's letter of 23rd August forwarding text of his representations would reach Dominions Office on 11th September under cover of Eales' above-mentioned letter to Tait of 25th August.

I might add that Resident Commissioner's view was that in matter of this kind Chief had often attempted to ignore Resident Commissioner and local authorities as proper channel of official communication—see in this context Sir Herbert Stanley's despatch of 6th January, 1932, No. 5,§ and my despatch of 4th August, No. 581.‖

I have no objection to such public use being made of this as you think desirable.—HIGH COMMISSIONER.

20283/55.

No. 93.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 5.40 p.m., 18th September, 1933.)

CONFIDENTIAL. No. 84. My legal advisers are preparing a note for use if necessary on claim apparently made by Tshekedi that proclamations limiting jurisdiction of native Courts to natives do not apply to Bamangwato. I should be glad to receive by telegram statement of grounds, so far as they are known to you, on which this claim is based and also observations of your legal adviser thereon.—THOMAS.

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* 10817/13: not printed. † 10817/24: not printed. ‡ 10817/22: not printed.
§ 10125/19: not printed. ‖ 20283/37: not printed.

20283/55.

No. 94.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 3.15 p.m., 19th September, 1933.)

[*Answered by Nos.* 98, 101 *and* 103.]

No. 85. CONFIDENTIAL. Your telegram No. 102 of 17th September.* As regards Tshekedi's desire to come to London the following considerations are present to my mind:—

(1) Subject to any new facts which may emerge from full report of evidence given before Commission of Inquiry and subject also to (3) below, I am disposed to the view that Tshekedi's period of suspension should be comparatively short—say six months or even less. This (still subject to (5) below) would appear adequately to meet the facts of the McIntosh case so far as I know them; and there is the further consideration that Tshekedi is the obvious member of his tribe to act as its Chief, and that so long as he is deprived of office he is likely to be the centre of agitation not only within the tribe but in South Africa and in this country.

(2) From Tshekedi's point of view the journey could only be justified on the assumption that there was a possibility by appealing to me of his being restored to Chieftainship at an early date. If, however, subject to (5) below, he is to be so restored in any case, this justification disappears.

(3) I gather, however, from the telegrams that Tshekedi claims that the provisions prohibiting native Courts from dealing with Europeans do not apply to him or to Bamangwato. It is clear that so long as this claim is maintained, it will not be possible to restore him to Chieftainship.

(4) It is clear that no such claim as that referred to at (3) above could be maintained after the issue of the Native Tribunals proclamation, draft of which was enclosed in Sir H. Stanley's despatch No 600 of 15th August.† As soon therefore as that proclamation has been issued, and subject of course to reasonable undertakings by Tshekedi that he will loyally co-operate with the Administration in the working of the proclamation, there would appear to be no reason for his continued suspension and the considerations mentioned at (2) above again arise.

(5) Journey to London and discussions at Dominions Office will revive and keep alive Press and public interest in this case which might otherwise well die down.

In view of these considerations I should prefer that visit should not take place. I am not, however, prepared to prohibit visit; and if Chief persists in his desire, I am doubtful whether it would be wise even to postpone it. I appreciate the force of the considerations in favour of postponement mentioned in your telegram; but Tshekedi and his advisers might well take occasion to represent that he had been prevented from obtaining access to me until my mind had been made up on an *ex parte* presentation of the case.

In all the circumstances I think Tshekedi should be informed as follows:—

(*a*) No useful purpose would be served by an appeal to me on the ground that provisions prohibiting native Courts from dealing with Europeans do not apply to Bamangwato. I am not prepared to discuss such a claim, and I desire it to be known that I could only advise His Majesty to approve termination of Tshekedi's suspension on the clear understanding that jurisdiction of any native Court over which he may preside as Chief is strictly limited to natives.

(*b*) Furthermore it should be pointed out that in any case this point will be made absolutely clear in proclamation, draft of which was recently circulated to Bechuanaland chiefs. Representations made to me by Tshekedi and others on this draft are now under consideration; but he must understand that on this point there will be no material alteration in the terms of the draft.

* No. 91. † 10817/20: not printed.

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(*c*) Subject to the above, he should remember that the effect of your order was not to depose but to suspend him from the acting Chieftainship, and that suspension is by its very nature temporary. It may well be that on receipt of full transcript of evidence and report I may find it possible to indicate, subject to satisfactory assurances on point mentioned at (*a*) above, my views as to the duration of his suspension, and he should consider therefore whether he would not be wise before incurring the expenditure of money and time involved in journey to England, at any rate to wait until I have had an opportunity of considering the matter from this point of view.

(*d*) If, after consideration of above points, he still desires to come to London he will not be prevented from doing so, and, while I would prefer that he should so time his journey as to give me some days for preliminary consideration of your full report before his arrival, nevertheless I do not wish to insist on any such delay.

If, before communicating the above to Tshekedi, there are any observations or suggestions you may wish to make, please do not hesitate to do so.—THOMAS.

20283/59

No. 95.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 10.12 a.m., 20th September, 1933.)

[*Answered by No.* 99.]

20TH SEPTEMBER. The following message from Eales is for Whiskard:—

Begins:—Late yesterday afternoon, with High Commissioner's knowledge, I had a purely private conversation with Buchanan. He is advising Tshekedi by telegraph to send a message to the High Commissioner to the effect that he recognizes that he should not have dealt with a case in which a European was concerned and undertaking not to deal in future with any European case; that in order to remove any misapprehension that may exist he does not and will not claim immunity from the law of the Protectorate as now in force or as may be in force hereafter; that no one could regret what has occurred more than he does and that he desires to assure the High Commissioner that he would work with the Resident Commissioner and his officers at all times in harmony and loyal co-operation.

I informed Buchanan that I could give no indication as to what would be effect of such a message should Tshekedi send it to the High Commissioner. He quite understood that my conversation with him in no way committed the High Commissioner or the Secretary of State.—*Message ends.*—HIGH COMMISSIONER.

20283/60

No. 96

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 11.51 a.m., 20th September, 1933.)

No. 105. 20TH SEPTEMBER. Following statement is published in the *Cape Times* this morning as having been issued yesterday afternoon Tuesday from the Office of the Prime Minister of Southern Rhodesia:—

Begins:—The Government of Southern Rhodesia is keeping closely in touch with the situation through the High Commissioner for South Africa. For the time

being the matter is in the hands of the Imperial Government. If as a result of the Tshekedi affair any questions arose as to the future control of the Protectorate the interests of this Colony would be carefully watched.—*Ends.*—HIGH COMMISSIONER.

20283/62.

No. 97.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 9 p.m., 20th September, 1933.)

[*Answered by No.* 102.]

No. 106. 20TH SEPTEMBER. Following is summary of report and evidence in inquiry conducted by Resident Commissioner and Liesching 13th September into alleged failure of magistrate to take action on Acting Chief's complaint regarding certain Europeans.

Begins:—Resident Commissioner pointed out that any complaint against officers of Administration would always be investigated and object of present inquiry was to investigate Acting Chief's complaint against magistrate. Acting Chief was asked to indicate example of laxity or neglect of duty. Acting Chief stated that he did not wish to bring any such charges or any complaint against magistrate saying that nobody had any complaint against magistrate. He stated that he meant to convey inability of magistrate to deal with the matter.

Official records put in evidence showed that as regards earlier cases that official action had been taken in 1930 and not 1932 by magistrates after consultation with Head Office and that in May, 1932, inquiry had been authorized by Head Office. The Chief was informed of proposed inquiry and promised to bring forward his evidence but owing to failure of Acting Chief to produce evidence on account of his absorption in other affairs and lengthy absences amounting on one occasion to three months the matter ended there. Acting Chief stated in evidence that he agreed that in this case last arrangement was that he should collect evidence and accepted that fact but stated that he was very busy then. In another part of his evidence he made following statement:—

> *Begins*:—There is no reason because I dropped my action the magistrate should have dropped it too. He fully realized the state of affairs existing in the country. The last arrangement was that I should collect evidence. I accept that fact but as I said I was very busy then. I have commenced afresh with magistrate Captain Potts. I use the letter in evidence and I definitely insist that firmer action should have been taken in fact when the question came up again it came up from the magistrate to me although these lads are Europeans. It was a complaint by Mr. Booker who referred the question to me. I insist that further action should have been taken but nothing further was done and I have never raised any complaint about inaction but what I say is that nothing was done. It is merely a fact. Nobody has any complaint against the magistrate. All that I asked was that something should be done. —*Ends.*

Next incident was report by Mr. Booker to the magistrate on 27th March, 1933, regarding nuisance caused by McIntosh and McNamee which was dealt with by the magistrate in correspondence with the Acting Chief and later by severe reprimand to McIntosh in the presence of witness. Magistrate in evidence stated:—

> *Begins*:—I administered to him I think the severest reprimand that I have ever administered to a European during the whole of my public service.—*Ends.*

As Booker reported nuisance ceased magistrate considered the incident closed.

Evidence was given by the magistrate to show action taken by him in 1931 and 1932 to control McIntosh and others and records of police action taken against them from 1930 to 1932 were handed in showing various sentences imposed and that in one instance sentence of imprisonment with hard labour had been served.

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In view of the facts cited above derived from official records and from evidence tendered to us we find that—

(1) Tshekedi makes no allegation of laxity or neglect of duty against the magistrate nor indeed any complaint against him.
(2) Tshekedi desires to record as a matter of fact the "inability" of the magistrate to deal with nuisance.
(3) Captain Nettelton took all reasonable steps to deal with the trouble in 1930 and in 1932 and that non-holding of an inquiry in 1932 was due to absorption of the Acting Chief in other matters and his prolonged absence at the end of which there was a change of magistrates.
(4) Captain Potts took all reasonable steps to deal with the earlier troubles.
(5) In regard to troubles in March, 1933, Captain Potts was justified in considering that particular instance was closed owing to action he had taken in corresponding with the Chief and reprimanding offender(s) and the fact that complainant had reported that nuisance had ceased.
(6) Confidential documents dated 8th October, 1931, handed in by Captain Potts at the inquiry indicates the serious view he took of the intercourse between Europeans and natives and drastic measures he recommended for dealing with the evil.
(7) It is unfortunate that each ground for complaint as it arose should not have been brought to the personal attention of the Resident Commissioner on its being received at Mafeking or by the Acting Chief on occasions of Resident Commissioner's visits to Serowe as the Resident Commissioner by virtue of his authority and position would have been able to deal with the matter in a more summary manner than those occupying a subordinate position.

We would add that it is in our view highly unfortunate that—

(1) no power existed prior to Immigration Proclamation of 1932 to regulate the entry into the Territory of undesirable persons.
(2) No power exists to remove from the territory persons however undesirable who have been born there.
(3) There is a fairly large proportion of undesirable persons European and semi-European not only in Serowe but in other districts of the Territory.

Up till 1932 it was consequently possible for almost anyone to settle in the territory and as they could not be ejected it appears to have been felt that it was of comparatively little avail to move them about from one district to another.

Report concludes with the following paragraph:—

> *Begins*:—In associating himself with the Resident Commissioner in this report Mr. Liesching records that while specific complaints of failure to act which had been brought against the magistrates have been disposed of at the inquiry in manner indicated in this report he is of the opinion that there is substance in the complaints lodged by the Acting Chief on the general ground that conditions from which these specific incidents arose were a matter in which responsibility for initiating remedial action rested with the Administration irrespective of particular complaints by the Acting Chief and that it appears that such remedial action of fundamental character required was not in fact taken by the Administration.—*Summary ends.*

Confidential memorandum setting out basis of Liesching's opinion as expressed in the above paragraph is being prepared and will be sent by the same mail as the report. Copy will also be sent to the Resident Commissioner for his observations.—HIGH COMMISSIONER.

20283/61

No. 98.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 4.51 p.m., 20th September, 1933.)

No. 107. 20TH SEPTEMBER. Your telegram 19th September No. 85 Confidential* is receiving my careful consideration and I will telegraph further as soon

* No. 94.

as possible. In the meanwhile I understand that there is possibility that I may shortly receive message from Tshekedi recognizing that he ought not to have dealt with case of European and undertaking not to deal with any such cases in future, making it clear that he does not and will not claim to be immune from the law of the territory now or hereafter in force and promising to work in harmony and loyal co-operation with the Administration.

If he sends such message it might become possible for me to recommend his re-instatement at an early date, and I should prefer therefore to wait a little longer before sending to Tshekedi a reply to his request to proceed to England.—HIGH COMMISSIONER.

20283/59.

No. 99.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 5 p.m., 20th September, 1933.)

(Paraphrase.)

SECRET No. 87. Reference your unnumbered telegram of 20th September.* The following message from Whiskard is for Eales:—

Begins:—I have shown the Secretary of State your message.

He is disposed to think, subject to High Commissioner's concurrence, that if Tshekedi sends a message to the High Commissioner on the lines indicated it should be possible for him (the Secretary of State) to advise His Majesty to terminate the suspension forthwith and to make an early announcement to this effect. The announcement would take the form that the Secretary of State, having received from the High Commissioner a message from Tshekedi of the kind sent out in your telegram, on the High Commissioner's advice and with his concurrence, has decided to advise His Majesty to terminate Tshekedi's suspension.

The Secretary of State would be glad to receive the High Commissioner's observations at the earliest possible moment.

The Secretary of State would be glad to be in a position at the same time to answer numerous questions he is receiving in regard to the Magistrate's action. He hopes therefore to receive as soon as possible the summary of evidence and report on this question promised in High Commissioner's telegram of 17th September, No. 101.†—*Message Ends.*—THOMAS.

20283/59.

No. 100.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 5.10 p.m., 20th September, 1933.)

(Paraphrase.)

No 88. SECRET. The following message is from Whiskard for Eales:—

Begins:—Sir H. Stanley has seen my immediately previous telegram.‡ He fully concurs in the course suggested.—*Message Ends.*—THOMAS.

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* No. 95. † No. 90. ‡ No. 99.

20283/66.

No. 101.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 2.30 p.m., 22nd September, 1933.)

[*Answered by No.* 105.]

22ND SEPTEMBER. No. 109. My telegram of 20th September, No. 107.* I have just received through the Resident Commissioner the following telegraphic message from Tshekedi:—

Begins:—As it appears that there is a feeling that it is my desire to try case in which Europeans are involved I desire to repeat what Mr. A. C. Germond said at recent inquiry that I said to him on 6th September, 1933, that I wished to stress the fact that I had not taken such a step regarding P. W. McIntosh with the intention of raising an issue on a point of jurisdiction affecting my Court, but I had been compelled in the interests of just administration and the good of my people to order the punishment of McIntosh.

I hereby abandon any right to deal with a case in which a European is concerned, and I undertake not to deal with any European case in the future. In order to remove any misapprehension that might exist I did not and will not claim to be immune from the laws of the Protectorate as now in force or as may be hereafter in force. No one could regret more than I do what has occurred, and I desire to assure the High Commissioner that I would at all times work in harmony and loyal co-operation with the Administration.—*Ends.*

In transmitting this message the Resident Commissioner has submitted the following observations:—

Begins:—In view of this message I have the honour to recommend that Your Excellency should advise termination of suspension forthwith coupled with a severe warning to Tshekedi as to future behaviour provided, however, that message from Tshekedi to me be read out in Serowe Kgotla by the Magistrate and be published in full in the Press here and in England, and that both Native Administration Proclamations be enacted at the earliest possible moment. I regard all these steps as essential in the interests of future peace in the Protectorate. Prompt enactment of Proclamations is especially necessary to avoid further argument and possible disagreement between Tshekedi and the Administration.—*Ends.*

I am glad to be able to give my support to Colonel Rey's recommendation, and if you agree I should be pleased if you would see your way to advise His Majesty to terminate suspension forthwith.

Subject to your views I am inclined to think that it would be in the interests of the Administration if I were myself to proceed to Serowe and personally reinstate Acting Chief after publicly reading Tshekedi's message and making it clear why such drastic action was necessary, and explaining that withdrawal by Tshekedi of claims which he advanced at the inquiry have made it possible for you to advise His Majesty to sanction his reinstatement.

I agree with Colonel Rey that Tshekedi's message should be published in full both in England and here simultaneously, and that it should at the same time be announced that it is my intention to proceed to Serowe to reinstate him. I should be grateful if I could see the terms of any proposed announcement before publication.

Pending your reply to this telegram, I have not instructed the Resident Commissioner to convey to Tshekedi message in your telegram of 19th September, No. 85,† in answer to his request for permission to proceed to England.—HIGH COMMISSIONER.

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* No. 98. † No. 94.

20283/68.

No. 102.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 5 p.m., 22nd September, 1933.)

[*Answered by No.* 107.]

No. 89. YOUR No. 106.* In view of great attention which this aspect of the case is attracting in Press and other circles here and of numerous inquiries which are being addressed to me it would be of great assistance to me if I could receive answers to following questions. No doubt many if not most of them are covered by report but I should be glad to have telegraphic replies in advance of report.

(1) What was nature of official action taken by magistrates in 1930 after consultation with Head Office?
(2) Did Resident Magistrate state why he did not pursue the matter in 1932 notwithstanding that Chief did not produce evidence? Was he satisfied that in fact there was no ground for complaint by Chief or for action by him?
(3) Who is Booker?
(4) After Booker had reported in March, 1933, that nuisance was ended, did Tshekedi make any further complaint to Resident Magistrate before taking matter into his own hands in September? If so what action was taken by Resident Magistrate? If not what explanation did Tshekedi offer?
(5) What was the cause and nature of action taken by Resident Magistrate in 1931 and 1932 to control McIntosh and others and what were the charges brought and sentences imposed from 1930 to 1932?
(6) Between 1930 and date of flogging Tshekedi had numerous interviews with Resident Commissioner and several interviews with High Commissioner. Did he explain why he did not mention the matter to them?
(7) Commission reports that it is unfortunate that complaints against Europeans in question on being received in Mafeking were not brought to the personal attention of the Resident Commissioner. Do they attribute responsibility for this to any particular person and do they consider that any action is called for?
(8) Were McIntosh and McNamee or either of them born in the territory?
(9) As regards statement that it was felt that it was comparatively little avail to move undesirables about from one district to another, was no distinction drawn between native reserves and other parts of territory—*i.e.*, was it not felt that presence of such persons in native reserve was specially liable to be " prejudicial to the peace and good government of the Protectorate or to the interests of the natives living therein? "—THOMAS.

20283/69.

No. 103.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 1.20 p.m., 23rd September, 1933.)

[*Answered by No.* 105.]

No. 110. 23RD SEPTEMBER. My telegram of 22nd September No. 109.† As Buchanan has now submitted request for Tshekedi to come to Cape Town for the purpose of discussing with himself and Jennings before departure 29th September and as Tshekedi's presence here might be embarrassing at present I have to-day requested the Resident Commissioner to inform Tshekedi in the terms suggested in your telegram of 19th September No. 85.‡

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* No. 97. † No. 101. ‡ No. 94.

I understand Buchanan is now advising Tshekedi to remain quiet at Francistown for the present but he would have to leave Francistown for Cape Town on the afternoon of 27th September if be is to catch next week's mail boat which there is reason to think is present intention.—HIGH COMMISSIONER.

20283/70.

No. 104.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 3.51 p.m., 23rd September, 1933.)

No. 111. 23RD SEPTEMBER. My telegram 22nd September No. 109.* Resident Commissioner Bechuanaland Protectorate has asked with reference to his recommendation that suspension should be terminated forthwith, that special attention should be drawn to proviso which relates to enactment of both draft Native Proclamations at earliest possible date.—HIGH COMMISSIONER.

20283/66.

No 105.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 2.50 p.m., 23rd September, 1933.)

[*Answered by No.* 106.]

No. 91. YOUR telegram No. 109 of 22nd September.* I accept your recommendation and will advise His Majesty accordingly.

First paragraph of Tshekedi's message, however, is in effect a repetition of his statement that he was justified in his action against McIntosh by failure of administration to take action. As you will have seen from my telegram No. 89 of 22nd September† public attention at any rate on this side is now concentrating on this point, and it will therefore be essential for me, in any public announcement which I may make, either to refute this part of Tshekedi's statement or to admit its justice, and state what action is being taken to prevent a recurrence. I should be grateful therefore for a very early reply to my telegram No. 89 together with any suggestions you may feel able to make as to what is to be said on this point.

As regards provisos to Resident Commissioner's recommendation.

(1) I agree with your view that you should yourself reinstate Tshekedi. Your own statement on that occasion should be agreed with me beforehand, and I will communicate further with you on this point in due course. As at present advised I am inclined to doubt whether it is either necessary or desirable to couple the reinstatement of Tshekedi with a severe warning, but his message should of course be read out in full.
(2) I should certainly regard it as undesirable to give any ground for the suggestion that consideration of draft Proclamations has been unduly hurried as a result of this affair, or that Tshekedi has been prevented from making the representations on behalf of his tribe which it is the duty of a Chief to make. As soon, therefore, as Tshekedi is reinstated he should be informed that the representations which (as I understand from your telegram No. 103 of 17th September‡) he has now made through proper channel will be considered as soon as possible, and that a further announcement regarding the proclamations will be made at an early date.

I will certainly consult with you, as you suggest, on the form of the announcement to be made on this side. You will appreciate that, for reasons set out at the

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* No. 101 † No. 102. ‡ No. 92.

beginning of this telegram, I cannot draft such a statement until I have your reply to my telegram No. 89.

I note from your telegram No. 110* that message in my telegram No. 85† is now being communicated to Tshekedi.—THOMAS.

20283/71.

No. 106.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 12.32 a.m., 25th September, 1933.)

No. 112. 25TH SEPTEMBER. Your telegram of the 23rd September No. 91.‡ I am sending in a separate telegram in reply to questions in your telegram No. 89 of the 22nd September.§

I will await further communication promised in paragraph (1) of your telegram as to statement I should make when reinstating Tshekedi. In this context I note you are doubtful as to necessity or desirability of coupling reinstatement with a severe warning but I do feel that he should be firmly admonished and that it should be impressed upon him that both Secretary of State and High Commissioner consider it very important that in performance of duties of Acting Chief he should give Resident Commissioner and Magistrate his complete confidence and consult with them upon all matters affecting the welfare of his people.

As regards paragraph (ii) of your telegram Resident Commissioner feels very strongly that issue of Native Proclamations should not be unduly delayed. He would have preferred that they should be issued before Tshekedi is reinstated and in this context he has referred to paragraph (4) of your telegram of the 19th September No. 85,† which indicated that there should be reasonable undertaking by Tshekedi that he will loyally co-operate with the Administration in working of Proclamation. I have to-day discussed with Resident Commissioner orally the question of issue of draft of Native Proclamations in the light of observations in your telegram No. 91, and he understands the position.—HIGH COMMISSIONER.

20283/72.

No. 107.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 1.20 a.m., 25th September, 1933.)

25TH SEPTEMBER. Your telegram of the 22nd September No. 89.§ Resident Commissioner has submitted the following answers to questions:—

(1) Both McNamee and McIntosh were called before the Magistrate and warned several times and the police were instructed to take the matter up. Police found that very little evidence could be obtained and the Chief was asked to co-operate and collect evidence in respect of alleged offences. Further police were instructed to give special attention to the actions of McNamee and McIntosh.

(2) Although he was satisfied that there were grounds for complaints, Magistrate considered it absolutely necessary for evidence to be collected by the Chief. Police had previously attempted to obtain evidence, but owing to the nature of the charges this had been unsuccessful. Women concerned would not discuss matters of this kind with the police.

(3) Booker is Hospital Assistant and Dispenser in this Administration stationed at present at Serowe.

* No. 103. † No. 94. ‡ No. 105. § No. 102.

(4) No further complaint was made by Tshekedi in respect of acts of immorality neither was report made of assault which occurred early in August and led to hearing of case in Kgotla. No explanation was offered by Tshekedi prior to sentence given in his Court.

(5) General complaints (immorality assaults and acts prejudicial to the interests of natives living in Serowe) on which a report to the Acting Resident Commissioner dated 28th April, 1932, was made by the Magistrate. Instructions were then sent by the Acting Resident Commissioner for an inquiry to be held. Owing to the absence of the Chief in connexion with mining concessions matters required witnesses could not be obtained Tshekedi was away about June to August, 1932. Charges were as follows: McIntosh charged under Police Offences Act reprimanded and discharged 1st August, 1930. Second assault, fine ten shillings or two weeks imprisonment with hard labour, 9th December, 1931.

McNamee first charged under Police Offences Act, reprimanded 1st August, 1930. Second charge, assault, fined £2 or one week imprisonment with hard labour, 11th November, 1930. Third charge, (*a*) assault, (*b*) malicious injury to property, sentence, one month imprisonment with hard labour on the first count and one week imprisonment on the second count. Fourth charge, assault, fined ten shillings or 14 days' imprisonment with hard labour, 12th December, 1931. Fifth charge, theft, discharged 8th August, 1932.

(6) No.

(7) As regards 1930 case, matter should have been brought to the notice of the Resident Commissioner by the Assistant Resident Commissioner (Stigand) or the Government Secretary (Dutton) on the Resident Commissioner's return from Cape Town where he had been conferring with the High Commissioner. Both Stigand and Dutton now retired, no action possible. As regards 1932 case no blame attached to the parties dealing with the matter as Resident Commissioner was on leave in England. As regards Booker incident in 1933, this was not reported to Mafeking for reasons given in Finding No. 5 of the Committee of Inquiry (see telegram of the 20th September No. 106*). Nevertheless it would have been better had the incident though closed been brought to the personal notice of the Resident Commissioner in view of the past history of the individuals concerned.

(8) Yes, both.

(9) Although there is a distinction between native reserves and other districts, in regard to this matter there is comparatively little real difference as Reserves and other districts are contiguous. Intercourse between them is continuous and there are native villages and/or native reserves under tribal chiefs in all districts except Ghanzi and Tuli Block.

(10) Resident Commissioner adds the following with further reference to your question:—

Begins:—The general question of illicit relations between Europeans and natives, which is the root of the present trouble, was taken up by me personally in Circular Minute of the 28th September, 1931, addressed to all magistrates and medical officers, drawing attention to evil, and instructing them to consult with police officers and missionaries in their districts and their respective chiefs, and forward to me their observations at an early date. Amongst answers received there was one from Tshekedi to the Magistrate dated 8th October, 1931, stating that the matter was not only difficult but delicate affair to approach, that he had commented on the subject but that very small percentage of the many such cases came to the notice of the Magistrate, that he did not at present wish to go into details, that the situation called for some action but of what nature he was not able at that stage to suggest. In October, 1931, I informed the European Advisory Council at the 15th Session that the matter had been receiving my attention with a view to considering possibility of mitigating the evil. After careful consideration of replies received to the Circular Minute referred to above I prepared and submitted to the High Commissioner draft Proclamation dealing with the matter in October, 1932. After lengthy correspondence and consultation between the High Commissioner and the three Resident Commissioners at Pretoria it was finally decided by agreement on the suggestion of the High Commissioner in February, 1933, owing to reasoned objections to proposed legislation to postpone

* No. 97.

further consideration for the time being. In view of above statement of action taken and proposed by the Administration in regard to which Tshekedi was consulted and was unable to assist, it cannot be contended that there was failure to act on the part of the Administration or that Tshekedi has legitimate grounds for complaint on this score. Obviously, in existing state of the law action in individual cases was limited to comparatively futile removal of the individual from one district to another, and the general position was affected by general action proposed and described above which was known by all the magistrates to be under consideration. With a view to amelioration of the position and prevention of recurrence of present events I am resubmitting for immediate enactment draft Proclamation submitted by me in October, 1932, and I am issuing instructions to all magistrates that any case of actual or potential difficulty with Europeans in native Reserves is to be reported immediately by the Chief to the Magistrate and by him to me personally.—*Ends.*

Legislation which was under consideration was on the lines of the Union Immorality Act No. 5 of 1927.—HIGH COMMISSIONER.

20283/73.

No. 108

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 11.50 a.m., 25th September, 1933.)

[*Answered by No.* 111.]

Reply urgently required.

No. 114. 25TH SEPTEMBER. Following for Whiskard from Eales:—

Begins:—In view of recent intimation of representations regarding draft Bechuanaland Protectorate Native Proclamations are now under consideration by the Secretary of State, Buchanan has asked me whether in the event of request for appointment of Royal Commission (see High Commissioners despatch of 8th September No. 648*) being refused I could tell him unofficially that sufficient time will be allowed for renewal by Tshekedi of request for permission to visit England for the purpose of making representations in person before the Secretary of State reaches final decision upon proposed legislation.

May an answer be given on this point?

Should be grateful for earliest possible reply.—*Ends.*—HIGH COMMISSIONER.

20283/74.

No. 109.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA

(Received 25th September, 1933.)

(Bechuanaland Protectorate.)

(No. 651.) High Commissioner's Office, Cape Town,

SIR, (At Pretoria), 12th September, 1933.

WITH reference to my telegram No. 91 of the 10th September,† I have the honour to transmit herewith a copy of the despatch in which the Resident Commissioner of the Bechuanaland Protectorate reported with his observations the recent occurrence at Serowe in the Bamangwato Reserve when the Acting Chief Tshekedi "tried" a European named P. W. McIntosh for an alleged offence and caused him to be subjected to corporal punishment.

* 10817/23: not printed. † No. 77.

77

2 I returned to Pretoria from the Kruger National Park on the morning of Saturday, the 9th September, and in view of telegraphic advices which I had received from the Resident Commissioner at Mafeking and from the High Commissioner's Office at Cape Town, I arranged to remain at Pretoria instead of continuing my journey to Cape Town the same day.

3. The Resident Commissioner also arrived in Pretoria on Saturday morning, and I at once discussed with him the situation which had arisen at Serowe as the result of Tshekedi's action. I also had the advantage of the presence of Mr. Liesching, who kindly gave me the benefit of his assistance and advice. Mr. Eales, the Administrative Secretary, accompanied by my Legal Adviser, Mr. L. Blackwell, K.C., had left Cape Town on Friday afternoon, a few hours after information as to the occurrence had reached Cape Town, but he could not, of course, arrive at Pretoria until the morning of Sunday the 10th September.

4. After discussion with Colonel Rey and Mr. Liesching, I came to the conclusion, for the reasons which I have explained in my above-mentioned telegram, that prompt and effective action must be taken, not only with a view to preventing any untoward incident in the Protectorate, but also to forestall any suggestion that outside assistance, other than that which could be provided by the Imperial Authorities, was necessary either to ensure the maintenance of order in the Protectorate or for the protection of life and property.

5. I decided that, as a first step, an administrative inquiry should be held with the least possible delay in order that full information might be obtained as to all the circumstances connected with the unlawful acts alleged to have been committed by Tshekedi or by any other person who might be concerned. And, as I considered it advisable that I should proceed to the Protectorate with the least possible delay to settle the matter personally on the spot, it was essential that before giving any decision I should have before me an authoritative account of what had actually taken place so far as the facts could be ascertained. There was, of course, no doubt that Tshekedi had actually "tried" a European in his Kgotla and ordered him to be flogged, since this was admitted by him in his letter of the 6th September to the Magistrate, of which a copy is enclosed with Colonel Rey's despatch.

6. I also considered it very necessary that there should be an effective demonstration by the Imperial Authority of its determination to maintain order, and I therefore arranged for an armed Naval escort to be sent at once from Simonstown to Palapye Road, having first ascertained from the Union Government that there would be no objection on their part to the passage through the Union of an armed Naval detachment. Facilities for transport over the railway were willingly afforded by the Union Authorities.

7. The situation was further considered and discussed at a conference which I had with Colonel Rey, Mr. Liesching and Mr. Eales on Sunday morning. Mr Blackwell, as legal adviser, and Lieut.-Commander Fearn, R.N., and Lieutenant Mackinnon, R.A.N., were also present.

8. It was decided that the Inquiry should take place on Wednesday, the 13th September, at Palapye Road, by a Commission consisting of Captain H. B. Neale, Acting Assistant Resident Commissioner, and Captain G. E. Nettelton, Resident Magistrate, to be appointed by me under the provisions of the Commissions' Powers Proclamation No. 30 of 1933. Subsequently, and with a view to strengthening the Commission by an experienced Imperial official unconnected with the Protectorate Administration, I asked Mr. Liesching whether he would be willing to assist at the Inquiry, and with your approval I appointed him to be a member of the Commission, with Captain Neale as Chairman and Captain Nettelton as the third member. Wednesday, the 13th September, was fixed for the holding of the Inquiry, instead of the preceding day, chiefly in order to afford Tshekedi an opportunity of obtaining legal advice, if he wished to do so, and at his request Mr. D. M. Buchanan, K.C., was communicated with by telephone at Cape Town, and he arranged to leave there for Palapye Road by Monday morning's express train.

9. I further decided, pending the result of the Inquiry and my decision thereafter, to suspend the Acting Chief from the exercise of the functions of the Chieftainship of the Bamangwato, and also to instruct the Resident Commissioner to issue an order to Tshekedi, under Proclamation No. 15 of 1907, directing him to remain at the Government Camp at Palapye Road pending the result of the Inquiry and my decision. The notification of suspension and the Resident Commissioner's order are to be served upon Tshekedi at Palapye Road to-morrow when the Resident Commissioner and the Naval escort will have arrived there.

10. I append to this despatch a copy of my communication to Tshekedi suspending him, my instruction to the Resident Commissioner for the issue of an order under Proclamation No. 15 of 1907, and of the Resident Commissioner's order, together with a copy of the Notice issued under Proclamation No. 30 of 1933, and of a despatch which I addressed to the Resident Commissioner regarding the appointment of the Commission.

11. I have arranged to leave by aeroplane for Palapye Road to-morrow morning to receive the Report of the Commission, and to meet Tshekedi and the Tribe in Kgotla at Serowe on Thursday, the 14th September. Mr. Eales will accompany me.

12. I shall submit further reports by telegraph and mail as soon as possible.

I have, &c.,
E. R. G. R. EVANS,
High Commissioner.

Enclosure 1 in No. 109.

(No. 6405.) Resident Commissioner's Office,
Mafeking, C.P., 8th September, 1933.

SIR,

ON the afternoon of Thursday, 7th September, I received the following telegram from Captain Potts, Resident Magistrate, Serowe :—

" 7th September. I have to report that yesterday, 6th September, European male P. W. McIntosh, of Serowe, was flogged in Chief's Kgotla by order of Chief Tshekedi in execution of a judgment passed by his Court on McIntosh in connexion with an assault on a native of this village. Chief failed to report to me before taking action and it was only after flogging had taken place that I heard indirectly of occurrence. Steps were immediately taken by me and confirmation of his action obtained from Chief, who has now furnished me with his report. I was unable to interview Chief personally as I am laid up in bed, but following message from me was delivered by Germond to Chief last night :—

Begins :—Chief requested to confirm alleged flogging and submit his full report for transmission to His Honour the Resident Commissioner. That as Magistrate I wished to record my utter disapproval of his action, which was in that the Chief was well aware that he was acting outside his jurisdiction and that his duty was to have reported to me before taking action. That I was grieved and alarmed at step taken by the Chief and wished to stress my displeasure of whole attitude of Chief in the matter.—*Ends*

My report, together with Chief's report, follows by next mail "

2. On the afternoon of the previous day (Wednesday, 6th September) the day on which the flogging had taken place in the morning, I received a telegram from Resident Magistrate, Serowe, dealing with another matter, in the course of which he informed me that the Acting Chief was leaving Serowe for the Nata River that night and would be away for a month.

3. Whether there is any connexion between the two events or not cannot at this stage be stated. But in view of the very serious situation arising from the Acting Chief's action is was obviously undesirable that he should be absent for a month so far away as the Nata River and I accordingly telegraphed to the Resident Magistrate instructing him to direct the Acting Chief to remain at Serowe, and if he had already left to send a messenger after him directing him to return to Serowe. The Acting Chief had left Serowe and a mounted messenger is following him. The reports referred to in the Resident Magistrate's telegram were received by me this afternoon and copies are attached.

4. They make the Chief's action still more astonishing and inexplicable if possible, and show that not only was the flogging ordered by the Chief, but that a disgraceful scene took place in the Kgotla.

5. He admits his action, requests the Resident Magistrate to circulate a minute to the European inhabitants on the subject, regrets that the corporal punishment "was not administered in the way I should have liked," states that he "may have no jurisdiction in cases where white people and natives are concerned," and seeks to justify his action on the grounds of the behaviour of the individual concerned and lack of adequate action on the part of the Resident Magistrate.

6. The effrontery and insolence of his attitude as revealed in these documents is such as to need no comment from me—it is a complete and barefaced defiance of all authority. The resulting position is most serious; and, while immediate action is essential, the nature of such action requires careful consideration.

7. The Acting Chief's action is in the first place in direct opposition to the law of the Territory. Section 10 of Proclamation of 10th June, 1891, as it now stands, is perfectly explicit on the point; it says :—

> " Provided that no suit, action, or proceeding whatsoever, to which any person of European birth or descent shall be a party, either as plaintiff or complainant, or as defendant or accused person, shall be adjudicated upon by any such Chief."

Moreover, the original Proclamation as it was enacted was specially modified by Proclamation No. 17 of 1922 by eliminating the words " under this Section save by the consent of all parties concerned," which appeared in the original Proclamation, so as to ensure that even if a European consented he could not be tried by a Native Court.

8. The same Proclamation (No. 17 of 1922) amended in a similar way Proclamation No. 1 of 1919, which dealt with the question of Europeans being tried by Chiefs.

9. As I have already stated, therefore, the legal position is perfectly clear and Tshekedi is fully aware of it. In his opposition to the Draft Native Administration Proclamations he has repeatedly referred to and quoted Section 10 of the Proclamation of the 10th June, 1891, to which indeed he attached great importance.

10. But the legal aspect by itself is of comparatively little importance as compared with the general position.

11. It is impossible to exaggerate the effect in the Protectorate and in South Africa generally of the public flogging of a European by natives in a Native Court. The effect on the native mind in the Territory and on the Chiefs in particular must be such as to render insecure the position of Europeans in the Territory, to cause the Government to be regarded with contempt, and to make it impossible any longer to carry on the administration of the Territory, unless immediate and drastic action is taken.

12. The effect on public opinion in South Africa—of all parts of the world—of an action of this kind is too serious to contemplate without the gravest misgivings. The Union Government could not, with its six million natives, contemplate acts of this kind in a neighbouring territory being tolerated, and there is little doubt but that they would feel compelled to take action of a nature which may well be guessed.

13. The nature of the offence committed by the European in question, his character and mode of living and his submission to the Chief's jurisdiction, do not really come into the picture at all, legal or otherwise.

14. The bare facts which remain, and with which I am alone concerned, are that in defiance of the explicit terms of the law, in defiance of the Administration, and in defiance of well-known and recognized public opinion in South Africa, the Acting Chief has deliberately committed an act in cold blood and with his eyes open, which is a challenge to existing authority, and which, unless promptly and drastically dealt with will strike at the very existence of such authority. It is not even as if the Acting Chief were a man addicted to alcoholic excess and that in a moment of drunken excitement he had allowed his feelings to run away with him. Nor by any conceivable stretch of the imagination could he be held ignorant of the law or the extent of his jurisdiction. He admits this. Nor is he an ignorant or illiterate savage.

15. He does not drink; he is fully alive to the legal and general aspects of the position, and he is an educated and intelligent young man.

16. His action is therefore, as I have already said, alike amazing and inexplicable.

17. But he has clearly demonstrated the impossibility of retaining him as Regent.

18. His tenure of the position as Regent and Acting Chief is subject to the pleasure of the High Commissioner. He has, moreover, been definitely told so.

19. On the occasion of Lord Athlone's visit to Serowe in 1926 His Excellency stated that he " confirmed Tshekedi in his position as Regent and Acting Chief during Chief Seretse's minority *so long as he served the Tribe faithfully and conformed to the laws of the Protectorate*."

20. Further, at Tshekedi's interview with the Secretary of State in London Lord Passfield spoke as follows: " His Excellency has placed you, the son of Khama and uncle of the young Chief Seretse, in a position of responsibility and trust as Regent of the Bamangwato and I am confident that on reflection you will realise that *so long as the High Commissioner maintains you in that position* it is your duty in all matters affecting the welfare of your people to place complete reliance on the words of the High Commissioner and his Officers whom His Majesty's Government have appointed to advise and guide you and your people."

21. This latest action of the Acting Chief abundantly justifies the estimate which I had reluctantly been driven to form of his character, and explains his previous lapses, which I had reported, and the full implications of which I fear had not been recognized.

22. In view of this recent happening surely the time has come when the High Commissioner can no longer maintain the Acting Chief in his position. It is unnecessary to labour this point, the bare facts speak for themselves. It is not as if this were the first time that the Chief had offended, though indeed the present offence is serious enough taken alone.

23. I do not propose to go over once again the ground which I have covered repeatedly in my previous reports and despatches as to the continual failings and shortcomings of the Acting Chief. Many of these were summarized in my report of the 11th March, 1932, where I definitely recommended that the Acting Chief should be reprimanded and warned as to his future course of action. I venture to suggest that had that course been adopted then the present trouble would not have occurred.

24. Since then the Acting Chief has, without cessation, maintained a course of opposition to the Government and its officers. He started it in the time of my predecessors; in spite of all my efforts to conciliate him he has continued it through my term of office. He has not confined himself to being offensive to Resident Commissioners and their subordinates.

25. As I have previously pointed out, he was compelled to withdraw an offensive letter he had written to Lord Athlone as High Commissioner and he was extremely rude to the Secretary of State in London, practically refusing to carry out his instructions.

26. The climax which I have for a long time feared, and the possibility of which I have ventured to point out before, has now been reached. In view of this latest development it appears, as I have already said, impossible to conceive of retaining Tshekedi as Regent. Quite apart from the gravity of the position as I have outlined it above it would be impossible to expect to carry through the Native Proclamations and the Nasarwa reforms, to which the Chief is bitterly opposed, as he has stated publicly in the Press and as I know from other sources. The Government would have no authority left to effect either of these vital measures.

27. The course of action I propose is accordingly as follows:—

An Administrative inquiry should be held *at once*, preferably early next week, into this matter. The facts are already completely known and it does not appear as if anything fresh could emerge from such an inquiry, but it is in my view essential that it should be held in order that the Acting Chief may have an opportunity of stating any case he may have fully and of advancing any arguments that he may wish.

28. I propose that the inquiry should be conducted by the Acting Assistant Resident Commissioner, Captain Neale, supported by Captain Nettelton, Resident Magistrate, Gaberones, who was Resident Magistrate at Serowe for some years; Captain Potts, the Resident Magistrate, Serowe, will be required to give evidence.

29. I am, of course, fully prepared to conduct the inquiry myself, assisted by the Magistrate, and my experience of this sort of work might be valuable. On the other hand, as I shall have to deal with the matter administratively and shall be responsible for carrying out Your Excellency's ultimate decision in the matter, I think it would be preferable for the inquiry to be carried out by Captain Neale.

30. I propose that the venue of the inquiry should be Palapye Road in order to avoid the possibility of any unfortunate incidents due to the excited state of feeling at Serowe.

31. It is obviously necessary that the Chief should be suspended from the exercise of his functions immediately and pending the result of the inquiry.

Assuming the facts now before us to be confirmed by the inquiry the only possible course would be to remove the Acting Chief from his position and to invite the Tribe to suggest to the Resident Commissioner for the consideration of the High Commissioner names for his successor.

It follows equally that Tshekedi could not possibly be allowed to remain in the Ngwato Reserve. No successor would dare to function and it would simply mean that the machinery of Government so far as the Natives are concerned, and indeed so far as the Administration is concerned, would cease to function. It would also mean risk of serious disturbance of peace, order and good Government.

32. It will consequently be necessary for the High Commissioner to issue an order under Section 3 of Proclamation No. 15 of 1907 directing the Acting Chief to confine himself to certain limits outside the Bamangwato or any native reserve. Indeed, I fear that there is little alternative to instructing him to confine himself to the Ghanzi

District. In any other District of the Territory he would be in close touch with one or other of the Chiefs and would undoubtedly stir up trouble.

It would, of course, be better still if he could be removed from the Territory, but it is unlikely, I fear, that the Union Government would allow him to live in Union Territory.

It is extremely improbable that the Chief will obey the order to move, and there will thus be no option but to arrest him after the period of grace prescribed under the order has elapsed. This cannot be done without the display of a strong force; I have none available, and in the circumstances it seems necessary to ask that a detachment should proceed to Serowe from the Fleet, or that men should be borrowed from Southern Rhodesia as was agreed by the Dominions Office in a recent case. I am strongly in favour of the former course.

33. It will, moreover, probably be necessary for the detachment which effects the arrest to remain in Serowe for a little while until a successor has been appointed to the Regency and feeling has died down.

34. It is possible, indeed I think it is more than probable, that the Acting Chief may refuse to attend the inquiry, and/or may refuse to recognize his suspension from the exercise of the Regency, and will attempt to continue to function.

35. In such an event it will, nevertheless, be necessary to hold the inquiry and examine as many witnesses as possible. The absence of the Chief from the inquiry could not, of course, be allowed to prejudice the issue of the Order of Banishment under Proclamation 15 of 1907, and the proceeding with the necessary steps to enforce it as detailed above.

36. It is, of course, possible that the Acting Chief might be criminally prosecuted for assault in regard to this matter, and I have given careful thought to this possibility.

37. I feel, however, that the object to be attained is not so much the punishment of the Acting Chief—desirable though this may be—but his removal from his functions which indeed appears essential. In other words, the action to be taken seems to me to be administrative rather than judicial.

38. Again, even if the Acting Chief were criminally prosecuted, found guilty and sentenced to a term of imprisonment, the position during his incarceration and after his release would be absolutely intolerable.

39. And there is the further possibility that the Acting Chief might be acquitted on a criminal prosecution on some legal technicality or otherwise, in which case the position of affairs would be too serious to contemplate.

40. On these grounds, therefore, I urge that administrative action on the lines indicated should be taken.

I have, &c.,
C. F. Rey,
Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

The Government Secretary,
Mafeking.

With reference to my telegram 87 of to-day's date, I now forward for His Honour's information:—

(1) Letter from Acting Chief Tshekedi:
(2) Statement by P. McIntosh.

As intimated in my telegram to-day I have been off duty with an influenza cold, otherwise I would have dealt with the matter myself. I have the following observations to make:—

(1) The incident leading to the hearing in Kgotla of this case occurred early in August. The Chief had ample time to notify me. He failed to do so. His action is one of contempt in ignoring his Magistrate, seeing that he is not ignorant of the law.

(2) The offence for which McIntosh was ordered to be flogged was one of common assault.

(3) The Chief is not correct when he says that no steps have been taken to deal with these young men. I am sneding you the office file which contains the official record of what has been done.

(4) The only solution for this sort of thing is to make co-habitation with native women by Europeans an offence, and this course I recommended nearly two years ago.

(5) Tshekedi's action is intolerable. He has now acted in total disregard of the Administration and in such a way that if this incident finds its way into the Press I would not venture to say where it will end.

(6) I have informed the Chief as to my views, but I must formally ask that the matter be taken further. It is immaterial as to whether McIntosh is a native clothed in a white skin. A fundamental principle is at stake and Tshekedi should, I venture to say, be put in his place.

I acknowledge receipt of your telegrams 364 and 365 of to-day and in this connexion I attach a copy of my letter to the Chief.

J. W. POTTS,
Resident Magistrate.

Serowe,
7th September, 1933.

P.S.—I have sent Trooper Lenanile on horseback to catch the Chief at Shashani—24 miles out—failing which to follow him up.

J. W. P.

P.P.S.—Attached by direction of Captain Potts, copy of Circular letter by Chief to European Residents of Serowe bearing on this matter.

His Honour's attention is invited to the wording thereof.

J. D. A. GERMOND,
Clerk.
(By direction of Magistrate).

Kgotla ea Kgosi,
Gamanwato.

Serowe, Palapye Road,
Bechuanaland Protectorate, 6th September, 1933.

MY FRIEND,

Just as you rang me up I was writing a report in connexion with the steps I was obliged to take in my Kgotla this morning, and the enclosed Circular letter, which you will please send round to the responsible European residents at Serowe, will explain my attitude with regard to the corporal punishment I ordered on young Phean McIntosh.

With regard to your question as to whether corporal punishment was given to the said Phean McIntosh in my Kgotla this morning, I have to state that I ordered it to be given. But unfortunately it was not administered in the way I should have liked. When Phean was ordered to receive his sentence he made a dash at me, but before he could get to where I sat a number of people caught him to stop him, and I cannot say whether he was badly handled or not. I can only say that those who caught hold of Phean were ordered to leave him, and after this Phean did not receive any cuts.

You are no doubt aware that time and again I have exchanged correspondence with the Resident Magistrate in connexion with the disturbances that Phean McIntosh, Tom McIntosh and Henry McNamee have been causing in the village, and I was asking the Magistrate to find means of giving a check to such conduct, but the Magistrate was unable to find an effective solution to deal with the ever-growing and unbecoming conduct of the above-mentioned lads. In fact, they are entirely at large to act as they please.

These lads have gone to the extent of assaulting native people; native girls have been put in the family-way by them; native beer is brewed by native girls for them, and they actually live in native huts in the village; in short, they live like the natives entirely and are only white people by birth.

I am forced to give a check of some kind to this sort of thing, and after listening at a great length to the charge brought against Phean and his defence before I gave out the above order I told Phean that it gave me pain to have to punish him in the way I was to do, because Phean was a white lad, but as he did not live the life of a white man, neither that of a native, some solution to correct his action had to be found.

I may have no jurisdiction in cases where white people and natives are concerned, but my decision was given in the interest of real and substantial justice, and for the good administration of the Tribe, and I think it was only proper for me to do.

I have always treated all the white people with respect, no matter what their stations in life are, and the action I took this morning was both in the interest of administration and judicial course.

With Greetings,
I am,
Your Friend,
TSHEKEDI KHAMA.

The Acting Resident Magistrate,
Serowe.

PHINEAS WILLIAM MCINTOSH states:—

I am the son of Mr. P. A. McIntosh of Serowe. Early in August, 1933, a native named Ramanganeng came past the place where I stay in Serowe. He began swearing at a native girl with whom I live. He passed on but came back in the afternoon of the same day. I was sitting in the hut and when I looked up I saw Ramanganeng hitting the girl with whom I live. She is named Digobo. I went over to them and pushed Ramanganeng away, at the same time hitting him with my clenched fist. As he walked away I was advised to take him to the Chief at once and I therefore followed him up. He ran away and I ran after him. I was with Eddie Klink. We caught him up and walked him up towards the Kgotla. Half way before we could get to the Kgotla some Headmen pleaded with us to leave Ramanganeng alone as he was sorry for what he had done. We then let him go

Two days afterwards I was sent for by the Chief. I went to the Kgotla. The Chief Tshekedi was there. The complainant wanted to call a witness in connexion with the affair and the Chief directed us to come up the following day. The Chief, however, left that night. In the morning we went to the Kgotla again and Acting Chief Serogola told us he would send for us when the Chief calls the case.

Yesterday (6th September, 1933) I received a message from the Chief to attend at the Kgotla. I went. The case was heard by the Kgotla. Chief Tshekedi was presiding. I did not protest against my case being heard in Kgotla. The Chief sentenced me to lashes. He did not say how many. When sentence was pronounced I stood up and walked towards the Chief in accordance with native custom in order to escape the lashes. As I did this I was hit by one of the Tribal Police—I think it was Madume as he was the only one who had a sjambok. Several men who were sitting in front of the Chief got up and manhandled me. They were kicking at me and hitting me with their fists while the Policeman was sjamboking me. Acting Chief Serogola got up and hit some of the men off from me. I could hear the Chief shouting at the mob. I believe he was telling them to stop, as it was at this moment that Serogola got up and hit some of the men off.

My shirt and trousers were torn and I received several weals in my back and arms (witness shows marks).

I was then allowed to go home.

The Chief just heard the case against me in the ordinary way in which he hears cases against natives. He did not ask me if I wished my case to be heard by the Magistrate.

I pay Poll Tax. I do not know whether I am subject to the Chief's jurisdiction or not. I thought the Chief had a legal right to adjudicate in my case. I have never before been flogged by a Native Court, nor have I been tried by the Chief before this for any offence, but I have had a civil matter against me decided by the Chief once before in connexion with some work I had done for natives.

When the Chief passed the judgment under question against me I did not object to the procedure. I did not report the matter to the Magistrate as I was satisfied the procedure was in order. I do not wish to lay a charge against the Chief.

P. W. MCINTOSH.

Taken and sworn before me at Serowe this seventh day of September, 1933.

J. D. A. GERMOND,
Justice of the Peace.

Kgotla ea Kgosi,
Gamanwato.

Serowe, Palapye Road, Bechuanaland Protectorate,
6th September, 1933.

To the European Residents of Serowe.

You may hear rumours that I had occasion to give corporal punishment to young Phean McIntosh in my Kgotla this morning, and I wish to give you first-hand information on the matter.

Several times cases have been brought to my Kgotla in which either or all of the following lads—Phean McIntosh, Tom McIntosh and Henry McNamee—were involved. Such were cases of assault by these lads on the native people, complaints by the girls or their parents about young native girls who have been put in the family-way by these lads; these lads openly have native beer brewed for them in the village. Their actions are too numerous to be numbered, and I think their behaviour in the village is well known and needs no explanation.

This morning a case was brought before me in which Phean badly assaulted one native lad who happened to be talking to one native girl with whom Phean is in love. After listening at some length to the evidence brought against Phean McIntosh and also to his defence, I was compelled to give corporal punishment to Phean in the interest of both justice and administration. However, before such corporal punishment could be given Phean made a dash at me, and the people present caught hold of him to stop him and I do not know whether he was badly handled or not. I stopped the people from doing him harm, and after this nothing was done to Phean in the way of punishment.

It has always been my principle to treat my white residents with respect, no matter what their stations in life are.

The lads in question have persisted in causing disturbances amongst my people, and the punishment ordered this morning was given with no malice, but with the determined effort of giving a check to this endless trouble and unbecoming influence.

I am,
Yours faithfully,
Tshekedi Khama.
(Original initialled by all European residents in Serowe).

Resident Magistrate's Office,
Serowe, 7th September, 1933.

My Friend,

His Honour the Resident Commissioner has instructed me by telegram to direct you to return to Serowe at once as you may be required to proceed to Mafeking or Cape Town.

Please acknowledge receipt.

With Greetings,
I am, Your Friend,
J. W Potts,
Resident Magistrate.

Chief Tshekedi Khama,
On the way to Nata.

Flogging of P. McIntosh (European) Chief's Kgotla, Serowe.
6th September, 1933.

(Message delivered to Chief Tshekedi by Mr. A. Gernaond by direction of Captain Potts, Resident Magistrate.

1. Magistrate requires confirmation of Chief's action in his Kgotla this morning.
2. That if the alleged facts are correct, he wishes to record his utter disapproval of Chief's action, which is in direct conflict with the law obtaining in this Protectorate.
3. That he requires the Chief's report in the matter immediately.
4. That the matter will be referred to His Honour, the Resident Commissioner, for transmission to His Excellency the High Commissioner.

5. That the Chief is well aware of the fact that McIntosh as a European does not fall under the jurisdiction of the Chief's Court; and that if the Chief had a case against McIntosh it was his duty to refer to his Magistrate—whose Court alone had jurisdiction in matters affecting European subjects.
6. That the Magistrate is grieved and alarmed at the step taken by the Chief and wishes to stress his displeasure at the manner in which the Chief dealt with this matter.

Complaint against P. McIntosh and H. McNamee.

Sir,

The Dispensary, Serowe, B.P., 27th March, 1933.

I have the honour to request that steps be taken to restrain the conduct of Messrs. Phean McIntosh and Henry McNamee, who are living in a small house in close proximity to my quarters, please.

Beer drinks are constantly being held in this house, and we are often disturbed during the night by the screaming of native women. Their mode of living is disgusting and objectionable, and I would be glad if they could be caused to remove from the neighbourhood of my quarters, please.

I have, &c.,
T. Elliott Booker.
Dispenser B.P.G.

The Resident Magistrate,
Serowe.

Office of the Resident Magistrate,
Serowe, 29th March, 1933.

My Friend,

Phean McIntosh and H. McNamee.

Mr. Booker has complained to me as to the manner in which these people are behaving themselves.

They appear to reside in a house close to the Dispenser's quarters at which beer drinks are constantly being held and they also appear to co-habit with native women.

You realise as well as I do that this sort of conduct is disgraceful in the extreme and I shall be obliged if you will see that the native women concerned are cleared out of this house, and more than that, I shall be glad if you will as Chief tell both McNamee and McIntosh that their presence in Serowe is undesirable.

With Greetings,
I am, Your Friend,
Resident Magistrate.

The Chief Tshekedi Khama,
Serowe.

Serowe, Bechuanaland, 7th April, 1933.

My Friend,

Phean McIntosh and H. McNamee.

I am in receipt of your letter of the 29th instant on the above, and in reply I wish to state that if these men were natives I should have dealt with them long before to-day, but I have been unable to do anything beyond reporting to you their disgraceful conduct and their undesirable presence in Serowe. But when I report about these men to the Magistrate, I am asked to collect evidence against them, and this at once makes me disheartened, because as the Magistrate knows, no evidence is wanting against such notorious individuals, and that in all sincerity evidence so obtained would tire even the Magistrate to listen to.

I think it is up to you, in your capacity as Magistrate, to take immediate definite steps against them: my assistance will, of course, be available, but my removing them from Serowe merely means their settling in the outside villages where their influence will be worse than it is in Serowe, their conduct calls for serious attention and I must say it is getting too late for action to be taken.

I am,
Your Friend,
Tshekedi Khama.

The Resident Magistrate,
Serowe.

Office of the Resident Magistrate,
Serowe, 15th April, 1933.

(I sent for McIntosh and severely rebuked him and warned him that he would be put out of the Reserve. Mr. Germond present.)

PHEAN McINTOSH AND H. McNAMEE.

MY FRIEND,

I have given your letter of the 7th April considerable thought and I would now suggest to you that, as Chief of the Tribe, you have it within your power to order the native women who are co-habiting with these men (I take it they are only concubines) to return to their homes. I do not know whose houses or huts these people are occupying, and I think that both men should be told as they are not conducting themselves in a seemly manner they should reside with their people If you do not feel able to do this I will send for them and tell them, but to my mind it is clearly your province to deal with the native women.

With Greetings,
I am, Your Friend,
J. W. P.,
Resident Magistrate.

The Chief Tshekedi Khama,
Serowe.

Serowe, Bechuanaland, 18th April, 1933.

PHEAN McINTOSH AND H. McNAMEE.

MY FRIEND,

I have received your letter of 15th April, 1933, on the above people, and I have noted the contents.

In reply thereto I would state that there are indeed certain grounds upon which as Chief I can order native women living as wives to both Phean and Henry to return to their mothers' homes; but there are interesting facts to observe before such a step can be taken. The people in question have now got children together, and is the Magistrate going to leave such actions unchecked as far as the males are concerned? Sending the girls to their homes is meaningless: there is nothing to stop both Henry and Phean going to these women during the night, and this is now their habit.

You will readily see the matter needs your further consideration.

I would again repeat that had this been a case between natives and natives, I should long have brought it to a conclusion. The matter calls for your firmer attention.

With Greetings,
Your Friend,
TSHEKEDI KHAMA.

The Resident Magistrate,
Serowe

Enclosure 2 in No. 109

High Commissioner's Office,
Pretoria, 10th September, 1933.

To Tshekedi Khama,
Acting Chief of the Bamangwato.

WHEREAS it has been reported to me that, notwithstanding the provisions of Section 10 of the High Commissioner's Proclamation of the 10th June, 1891 (as amended by Proclamation No. 17 of 1922) whereby all cases in which Europeans are concerned are excluded from the jurisdiction of Native Courts in the Bechuanaland Protectorate, you, Tshekedi Khama, have wrongfully and unlawfully usurped the jurisdiction of the lawfully appointed Magistrate of the Ngwato District and assumed and exercised jurisdiction over a person of European birth, in that, on or about the 6th September, 1933, you tried or purported to try, Phineas William McIntosh, a person of European birth, for an alleged offence, and that you subjected, or caused to be subjected, the said Phineas William McIntosh to corporal punishment;

Now therefore I, His Majesty's High Commissioner for South Africa, and as such empowered to exercise on His Majesty's behalf all powers and authorities in the

Bechuanaland Protectorate, have given directions that an Inquiry into the above-mentioned wrongful and unlawful acts alleged to have been committed by you, Tshekedi Khama, or by any other person who may be concerned, and into all the circumstances connected therewith, shall be held by such person or persons as I may appoint to be a Commission of Inquiry under the provisions of the Commissions' Powers (Bechuanaland Protectorate) Proclamation No. 30 of 1933.

You have been duly notified of the time and place of the Inquiry.

I further direct that pending the result of such Inquiry and my decision thereafter, you, Tshekedi Khama, shall be and are hereby suspended from the exercise of all or any of the functions of the Chieftainship of the Bamangwato Tribe.

E. R. G. R. EVANS,
High Commissioner.

Enclosure 3 in No. 109.

To the Resident Commissioner
of the Bechuanaland Protectorate.

WHEREAS it has been shown to my satisfaction that there are reasonable grounds for believing that Tshekedi Khama, for the time being living in the Bamangwato Reserve of the Bechuanaland Protectorate, is dangerous to the peace of the said Protectorate, I do hereby, under and by virtue of the provisions of Section 3 of Proclamation No. 15 of 1907, instruct you to issue an Order under your hand directing the said Tshekedi Khama to confine himself during His Majesty's pleasure within the limits of the Government Camp at Palapye Road in the said Protectorate and during such period not to enter or be found in any other area of the said Protectorate.

E. R. G. R. EVANS,
High Commissioner.

Pretoria,
10th September, 1933.

Enclosure 4 in No. 109.

To Tshekedi Khama,
Residing in the Bamangwato Reserve,
Bechuanaland Protectorate

UNDER and by virtue of instructions of His Excellency the High Commissioner dated the 10th day of September, 1933, issued in terms of Section 3 of Proclamation No. 15 of 1907, I do hereby direct you, Tshekedi Khama, to confine yourself during His Majesty's pleasure within the limits of the Police Camp at Palapye Road in the Bechuanaland Protectorate and during such period not to enter any other area of the said Protectorate.

And I hereby notify you that should you neglect or refuse to comply with the terms of this order and during its continuance be found in any other area within the Bechuanaland Protectorate without the written permission of the High Commissioner or the Resident Commissioner or while within the aforesaid specified area do any further act which is a danger to the peace of the Protectorate you will be guilty of an offence and will be liable on conviction to imprisonment with or without hard labour for a period of not less than one month and not exceeding six months and with or without a fine not exceeding one hundred pounds and in default of payment to a further term of imprisonment for a period not exceeding six months. This order to take effect forthwith.

C. F. REY,
Resident Commissioner of the Bechuanaland Protectorate.

10th September, 1933.

Enclosure 5 in No. 109.

Bechuanaland Protectorate.
(No. A.) High Commissioner's Office,
Pretoria, 11th September, 1933.

SIR,

I HAVE the honour to transmit to you the accompanying copy of a Notice* which I have caused to be issued under the provisions of the Commissions' Powers

* Not printed here.

(Bechuanaland Protectorate) Proclamation No. 30 of 1933 appointing Captain H. B. Neale, Acting Assistant Resident Commissioner, Mr. P. Liesching, C.M.G., Political Secretary to the High Commissioner for His Majesty's Government in the United Kingdom, and Mr. G. E. Nettelton, Resident Magistrate, to be a Commission to inquire into certain reported occurrences at Serowe on the 6th September, Captain Neale to be Chairman of the Commission. The Notice will be published in an Official Gazette Extraordinary to-day.

2. The scope of the Inquiry, which it has been arranged should be opened at Palapye Road on the 13th September, should include the investigation of all the circumstances connected with certain unlawful acts alleged to have been committed by the Acting Chief Tshekedi Khama or by any other person who may be concerned.

3. The Acting Chief Tshekedi, and any other person concerned should, if he or they so desire, be allowed to be advised by Counsel.

I have, &c.,
E. R. G. R. EVANS,
High Commissioner.

His Honour
the Resident Commissioner
of the Bechuanaland Protectorate.

20283/76.

No. 110.

TELEGRAM
from
HIGH COMMISSIONER, SOUTH AFRICA.
(Received 11.32 a.m. 26th September, 1933.)

[Answered by No. 111.]

No. 116. 26TH SEPTEMBER. My telegram of the 23rd September, No. 110.* Tshekedi is pressing for permission to leave Francistown immediately for Cape Town in order to consult with his legal adviser.

I have sent message to him saying that I am very willing that facilities should be given to enable him to consult with advisers, but that as he is aware his message to me of the 21st September has been communicated to you by telegraph (see my telegram of the 22nd September, No. 109†) and that as I expect to receive your reply very shortly, I think he would be well advised not to leave the Protectorate at the moment.

I understand that his proposed visit to Cape Town is preliminary to early departure for England.

In view of intended early reinstatement and for other reasons it seems desirable that Tshekedi should not leave the Protectorate until your decision has been announced and it would be helpful if I could receive telegram from you which I could communicate to Tshekedi acknowledging receipt of his message of the 21st September and saying that it is your wish that he should remain in the Protectorate for a few days longer when he may expect to receive a further communication.—HIGH COMMISSIONER.

20283/76.

No. 111.

TELEGRAM
to
HIGH COMMISSIONER, SOUTH AFRICA.
(Sent 5.10 p.m., 26th September, 1933.)

[Answered by No. 112.]

No. 93. YOUR telegrams No. 114 of 25th September‡ and No. 116 of 26th September.§

I am not clear whether Tshekedi still desires to discuss with me the question of his suspension or whether he now only desires to discuss draft Proclamations.

* No. 103. † No. 101. ‡ No. 108. § No. 110.

If he desires to discuss the question of his suspension he should be informed that I hope to issue an early statement on this subject and that he should await that statement.

If his only desire is to discuss draft Proclamations he should be informed that his communications on this subject are now receiving my most careful consideration and that, as he has had very ample opportunity of putting his views before the High Commissioner, I do not think that any useful purpose would be served by a discussion with me. If there are any points which he considers he has not made sufficiently clear in the representations already put forward by him, he should submit to you through the Resident Commissioner at a very early date any explanatory statement by which he desires to supplement them.

I appreciate of course that, pending Tshekedi's reinstatement, he is not entitled to submit representations on behalf of the tribe. As, however, I hope that it will be possible to make an announcement of his reinstatement within the next few days, we can, I think, waive this point.—THOMAS.

20283/78.

No. 112.

TELEGRAM
from
HIGH COMMISSIONER, SOUTH AFRICA.
(Received 9.46 p.m., 27th September, 1933.)

No 117. 27TH SEPTEMBER. Your telegram of 26th September No. 93.* Your message has been communicated to Tshekedi. In view of repeated requests by him to be allowed to consult his legal adviser and as refusal would have inevitably given rise to the suggestion that he was being prejudiced, I have given him permission to come to Cape Town. He is due to arrive here mid-day Friday, the 29th September.—HIGH COMMISSIONER.

20283/84.

No. 113.

PRESS NOTICE ISSUED BY THE DOMINIONS OFFICE, 28TH SEPTEMBER, 1933.

THE High Commissioner for South Africa has received from Tshekedi, who was lately, by his order, suspended from the exercise of the functions of Acting Chief of the Bamangwato Tribe in the Bechuanaland Protectorate, the following communication:—

"As it appears that there is a feeling that it is my desire to try cases in which Europeans are involved I desire to repeat what Mr. A. C. Germond said at recent inquiry that I said to him on 6th September, 1933, that I wished to stress the fact that I had not taken such a step regarding P. W. McIntosh with the intention of raising an issue on a point of jurisdiction affecting my Court but I had been compelled in the interests of just administration and the good of my people to order the punishment of McIntosh.

I hereby abandon any right to deal with a case in which a European is concerned, and I undertake not to deal with any European case in the future. In order to remove any misapprehension that might exist, I did not, and will not claim to be immune from the laws of the Protectorate as now in force or as may be hereafter in force. No one could regret more than I do what has occurred and I desire to assure the High Commissioner that I would at all times work in harmony and loyal co-operation with the Administration."

As regards the first paragraph of this communication, the High Commissioner, simultaneously with the inquiry held by his order into the circumstances surrounding

* No. 111.

the flogging of McIntosh, caused a separate inquiry to be held with a view to ascertaining whether there was ground for the complaint made by Tshekedi that there had been failure on the part of the Administration to deal promptly and adequately with offences committed by McIntosh and other Europeans in Serowe.

From this inquiry, the full report of which is expected to be received about the middle of October, it appears as follows:—

(1) Charges were brought against McIntosh and McNamee on several occasions between 1930 and 1932, when evidence was available of actual offences against the law. During this period McIntosh had been convicted of assault and sentenced to a fine of 10s. or two week's imprisonment with hard labour.

The following convictions had been obtained against McNamee:—(1) assault: fine of £2 or one week's imprisonment with hard labour; (2) assault and malicious injury to property: one month's imprisonment with hard labour and one week's imprisonment respectively. (3) assault: fine of 10s. or two weeks' imprisonment with hard labour.

(2) In 1932, in view of complaints by Tshekedi and others as to the association of McIntosh and McNamee with native women, the Acting-Resident Commissioner ordered an inquiry with a view to possible action against them under Proclamation No. 8 of 1929, which empowers the Resident Commissioner to prohibit any person from residing in any district in the Protectorate if in his opinion the presence of such person therein is likely to be prejudicial to the peace and good government of the Protectorate or to the interests of the natives living therein. (As regards this Proclamation it is to be observed that persons born within the Protectorate (as were McIntosh and McNamee) cannot be expelled from the Protectorate but can only be removed from one district within the Protectorate to another). In view of the difficulty of getting the women concerned to discuss with the Police matters of this nature, the Acting Chief was asked to collect the necessary evidence. Owing partly to absences from Serowe and partly to absorption in other affairs the Acting Chief took no steps to collect such evidence, and in the absence of any evidence such as would justify action under the Proclamation referred to, the matter was dropped for the time being.

(3) In March, 1933, a further complaint was received from a European living in Serowe. After correspondence with the Acting Chief, the Resident Magistrate severely reprimanded and warned McIntosh in the presence of witnesses. As a result of this action the European referred to stated that the nuisance caused by these men had now ceased.

(4) No complaint regarding either McIntosh or McNamee was made to the Resident Magistrate after the incident referred to at (3) above.

(5) Although the assault in respect of which McIntosh was tried by Tshekedi in Kgotla was committed early in August, no report of any kind was made by Tshekedi to the Resident Magistrate. The trial and flogging occurred on 6th September.

(6) During the period 1930 to 1933 the Acting Chief had numerous interviews with the Resident Commissioner and several interviews with the High Commissioner. On no occasion did he refer to the conduct of these or any other Europeans in the Reserve, nor did he make any complaint as to inaction or inadequate action by the Administration.

In view of these facts, the High Commissioner is unable to accept the statement made by Tshekedi, as a reason for dealing with this case himself, contrary to the law, instead of referring it to the Resident Magistrate, that he was "compelled in the interests of just administration and the good of his people" to order the punishment of McIntosh.

Nevertheless, in view of the statements in Tshekedi's communication (1) that he has abandoned any right to deal with a case in which a European is concerned; (2) that he did not and will not claim to be immune from the laws of the Protectorate; and (3) that he will at all times work in harmony and loyal co-operation with the Administration; the High Commissioner has recommended to the Secretary of State for Dominion Affairs that His Majesty should be advised to terminate forthwith the period during which Tshekedi is suspended from the exercise of the functions of Acting Chief.

The Secretary of State for Dominion Affairs concurs in the recommendation of the High Commissioner and has advised His Majesty accordingly.

In accordance with the advice received by him from the Secretary of State, His Majesty has been graciously pleased to terminate the period during which Tshekedi is suspended from the exercise of the functions of Acting Chief of the Bamangwato, and also the operation of the order requiring Tshekedi to reside in the Tati district.

Tshekedi will be reinstated as Acting Chief at Serowe by the High Commissioner as soon as the necessary arrangements can be made.

20283/91.

No. 114.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 10.50 a.m., 5th October, 1933.)

[*Answered by No.* 116.]

No. 126. 5TH OCTOBER. I have to-day reinstated Tshekedi. He asked for interview after ceremony and persists in his request that he may be allowed to proceed to England as soon as possible. He states that if you cannot see him he has friends in England whom he wishes to consult. Further, he renews his request that Royal Commission may be appointed to advise upon draft Native Proclamations so that he and other Chiefs may have opportunity of putting their views before Commission. If it should be decided to appoint and send out a Royal Commission Tshekedi would not of course proceed to England.—HIGH COMMISSIONER.

10817/26.

No. 115.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 5.25 p.m., 6th October, 1933.)

[*Answered by No.* 120.]

No. 128. 6TH OCTOBER. My telegram of the 5th October, No. 126.* It seems clear that Tshekedi, who is obviously acting on advice of Rev. A. E. Jennings, of London Missionary Society, and Advocate Buchanan, will not readily relinquish his project to go to England in connexion with draft Native Proclamations. In the course of an interview which I had with him at Simonstown on the 30th September he suggested, doubtless at the instigation of Jennings, that if he could not be given permission to proceed for the purpose of an interview with you he might make the journey privately, and he seemed to have assumed that in that event no special permission would be necessary. I pointed out that a Native Chief could hardly be regarded as travelling in a purely private capacity, and that it would therefore be appropriate that you should be informed of any such proposed visit and your concurrence obtained.

Resident Commissioner is not in favour of desired permission to visit England being granted either for purpose of interview with you or in private capacity, and he urges the following objections (1) it would involve further delay in the issue of Native Proclamations, (2) it would involve reopening in Press and otherwise of present troubles with consequent discontent and unrest now temporarily settled by Tshekedi's reinstatement, (3) it would delay progress of various measures for re-establishment of native industries in and exports of products from territory as nothing would be done by any Acting Chief in Tshekedi's absence, (4) it would cause unrest amongst other Chiefs, (5) cost of journey of party would be considerable, and as Tshekedi is at

* No. 114.

present in debt to the extent of several thousand pounds would impose heavy financial burden on tribe ultimately.

I agree that it is undesirable that Tshekedi should go to England at the present time, but I think that he is being strongly advised to do so by Jennings.—HIGH COMMISSIONER.

10817/25.

No. 116.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 1.45 p.m., 6th October, 1933.)

[*Answered by No.* 121.]

No. 106. YOUR telegram 5th October, No. 126.* You should explain to Tshekedi (1) that I can see no grounds upon which I could recommend the appointment of a Royal Commission to advise upon the draft Proclamations, (2) that it is not proposed to take steps to issue the Proclamations before Sir Herbert Stanley has returned to South Africa. In the meantime the communications already received from Tshekedi will be carefully considered, and there will be ample time both for him and any other of the Chiefs concerned who may desire to do so to prepare any supplementary statements of their views and to forward them through the Resident Commissioner, so that they may be laid before Sir H. Stanley on his return. In the circumstances no useful purpose would, in my opinion, be served by Tshekedi proceeding to England to discuss matter with me now, and I consider that his proper course is to remain in South Africa where, as pointed out above, he will be able if he so desires to submit his views to Sir H. Stanley before a decision is reached as to final form of the Proclamations.—THOMAS.

10817/25.

No. 117.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 1.45 p.m., 6th October, 1933.)

No. 107. CONFIDENTIAL. My telegram No. 106† has been framed in consultation with Sir H. Stanley as most appropriate method of discouraging Tshekedi's desire for immediate visit to England. You will understand, of course, that I have no desire to postpone issue of Proclamations as soon as all necessary investigations have been completed.—THOMAS.

20283/92

No. 118.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 9th October, 1933.)

(Bechuanaland Protectorate.)
(No. 682.)

High Commissioner's Office, Cape Town,
26th September, 1933.

SIR,

I HAVE already forwarded to you a copy of a despatch (No. 6405 of the 6th September)‡ in which the Resident Commissioner of the Bechuanaland Protectorate reported, with his observations, the recent occurrence at Serowe in the Bamangwato

* No. 114. † No. 116. ‡ Enclosure 1 in No. 109.

Reserve when the Acting Chief Tshekedi " tried " a European named P. W. McIntosh for assaulting a native and caused him to be subjected to corporal punishment, and I now have the honour to submit the following report.

2. On my arrival at Nelspruit in the Transvaal on Friday, the 8th September, I was travelling to Pretoria from the Kruger National Park *en route* to Cape Town—I received telegraphic messages from the Resident Commissioner at Mafeking and from the High Commissioner's Office at Cape Town to the effect that a serious situation had arisen in the Bamangwato Reserve in consequence of the Acting Chief Tshekedi having tried and flogged a European for an alleged offence. In view of the dangerous possibilities of the situation, I at once took the precaution of warning the Senior Naval Officer at Simonstown that a Naval force might be required, and instructed him to make the necessary preparations. I arranged to remain at Pretoria instead of proceeding to Cape Town on Saturday, the 9th September, as originally planned, in order that I might confer with the Resident Commissioner (Lieutenant-Colonel C. F. Rey), who came to Pretoria to meet me there. Meanwhile the Administrative Secretary (Mr. S. Eales), accompanied by my Legal Adviser (Mr. L. Blackwell, K.C.) had left Cape Town on Friday afternoon, but could not of course reach Pretoria before Sunday morning, the 10th September.

3. I arrived at Pretoria on Saturday morning and was joined by Colonel Rey. I discussed the position with him, and I also had the advantage of the assistance and advice of Mr. P. Liesching (who was acting as High Commissioner for the Government of the United Kingdom in the Union). After hearing the views of Colonel Rey on the local situation and discussing with him and Mr. Liesching the appropriate measures to be taken, I decided that, having regard to the absence of any effective force of Police in the Protectorate, and to the fact that on the evidence so far available very early action appeared to be desirable in dealing with the Acting Chief of a character which might excite opposition among the tribe, it would be advisable as a precautionary measure and as a safeguard against any untoward incident, to order an armed Naval Escort to proceed at once from Simonstown to Palapye Road, the nearest railway station to Serowe. I had of course first ascertained that His Majesty's Government in the Union would have no objection to the passage of the escort through the Union, and Mr. Pirow, the Minister of Railways and Defence, kindly gave directions for railway transport facilities to be provided. I cannot speak too highly of the willingness and efficiency of the Railway Administration, without whose co-operation it would have been impossible to move the escort to Palapye Road, a distance of over 1,100 miles, at such short notice. The General Manager of the Rhodesia Railways also gave invaluable assistance by providing suitable motor lorries for road transport.

4. I decided that an administrative inquiry should be held into the incident with the least possible delay, in order that the facts might be elicited and placed on record, and that the Acting Chief might be afforded full opportunity of explaining his action. The Resident Commissioner had already reported to me both orally and in his above-mentioned despatch that the occurrence had come to the notice of the magistrate indirectly, no report having been made to him by the Chief until he called for an explanation, and that Tshekedi in his written account of what had happened had stated that he had ordered corporal punishment to be given. I also decided to proceed to the Protectorate to deal with the matter personally on the spot immediately the inquiry had been completed.

5. The following morning (Sunday, the 10th September), after the Administrative Secretary and my Legal Adviser had arrived at Pretoria, further discussions took place as to the arrangements to be made for carrying out the decisions which had been reached on the preceding day. It was decided that the inquiry should take place on Wednesday, the 13th September, instead of Tuesday, in order to enable the Acting Chief to obtain legal advice if he so desired. After it had been ascertained that he wished to have the assistance of Mr. D. M. Buchanan, K.C., of Cape Town, arrangements were made, by telephone from Pretoria, for Mr. Buchanan to leave Cape Town on Monday morning in order that he might arrive at Palapye Road before the inquiry began. I have directions for Tshekedi to be suspended from the chieftainship and for him to remain at Palapye Road pending the inquiry, and my decision thereafter, and he was also instructed to summon a meeting of his tribe in Kgotla at Serowe on Thursday, the 14th September, which was the date I had fixed for the announcement of my decision in the matter. Mr. Blackwell left Pretoria on Sunday evening.

6. The magistrate at Serowe reported that two of the leading European residents there had made representations to him, asking that protection might be provided

for their families in view of the local situation, and with my approval they were informed that the Administration was fully alive to its responsibilities.

7. On Monday, the 11th September, it was decided, after your approval had been obtained, to appoint Mr. Liesching to be a member of the Commission of Inquiry, with Captain H. B. Neale, Acting Assistant Resident Commissioner, as Chairman, and Captain G. E. Nettelton, Resident Magistrate, as third member. I gave directions that the scope of the Inquiry should include the investigation of all the circumstances connected with Tshekedi's action and the conduct of any other person who might be concerned. Captain Neale was also informed that the Inquiry was not a judicial trial but a formal Administrative Inquiry, and that while Mr. Buchanan might be present as the Chief's legal adviser he should not, for instance, be permitted to cross-examine witnesses. This was in accordance with the general conduct of the inquiry as an administrative investigation of the facts; there was of course no prosecution, no charges were formulated, nor was it contemplated that the Administration or any of its officers or other persons concerned should be legally represented.

8. The Naval escort, which left Cape Town on Sunday evening, the 10th September, arrived at Palapye Road on Tuesday evening, the 12th September. The Resident Commissioner and Mr. Liesching, who had left Pretoria the previous evening, joined the train at Mafeking.

9. The Inquiry opened on Wednesday morning, the 13th September, and closed in the afternoon. It was held in public, a considerable number of natives being present, despite the instructions which had been given to Tshekedi that his people were to remain at Serowe. On the conclusion of the public Inquiry the Resident Commissioner and Mr. Liesching conducted an investigation into certain statements which had been made by Tshekedi as to the alleged failure of the magistrate of Serowe to take action upon, or report to high authority, complaints which he had made with regard to the behaviour of McIntosh and certain other Europeans living at Serowe. This investigation was not held in public, since for obvious reasons it was undesirable that natives should be admitted, but the Acting Chief and his legal advisers were present. I attach hereto a copy of the following documents:—

(1) Report of Commission appointed under Notice No. 145A to inquire into certain reported occurrences at Serowe on the 6th September, 1933.
(2) Record of evidence taken at inquiry.*
(3) Report by the Resident Commissioner and Mr. Liesching into the alleged failure of the magistrate at Serowe to take action with regard to complaints lodged by Acting Chief Tshekedi as to the conduct of certain European residents at Serowe.
(4) Record of evidence taken at this further inquiry.*

10. I arrived at Palapye Road, accompanied by the Administrative Secretary, and members of my Naval Staff, at sunset on Wednesday, the 13th September, having travelled from Johannesburg by a privately owned aeroplane.

11. Shortly after my arrival I received and considered in consultation with the Resident Commissioner, the Administrative Secretary, Captain Neale and Mr. Liesching, the Reports upon both the Public and Private Inquiry. I might here mention that Captain Nettelton had requested leave to withdraw from the Commission on the ground that in the course of his duties as a magistrate he might have been connected, directly or indirectly, with matters coming within its scope.

12. In the light of the Reports which were submitted to me I decided to take the following action, viz.:—

(1) to suspend Tshekedi from the chieftainship during His Majesty's pleasure;
(2) to order him to live in the Tati district during His Majesty's pleasure;
(3) to direct the tribe to nominate in his place an acting Chief and Council;
(4) to give orders for the immediate expulsion of two Europeans, P. W. McIntosh and H. McNamee, from the Bamangwato Reserve and for their exclusion from all other Native Reserves in the Protectorate.

I was satisfied from the Report of the Inquiry that no grounds had been disclosed for action against either of the officers who had held the post of magistrate at Serowe during recent years.

14. I have to offer the following observations upon the Reports and with regard to the reasons which influenced me in arriving at my decisions.

15. The Commission found that P. W. McIntosh, who is a European, was tried, convicted and flogged in the Chief's Kgotla, and that this was done deliberately by

* Not printed here.

the Acting Chief Tshekedi, who was fully aware that as a Native Chief he had no jurisdiction to deal with a case in which a European is concerned. According to the Commission's Report Tshekedi's defence, briefly stated, was that, in the first place, the man McIntosh had an extremely bad character, lived among the tribe as a native, interfered with native girls and had immoral relations with them, and that his (Tshekedi's) action was justified and was in the best interests of the tribe. Secondly, he challenged the legal position and claimed that he was immune from the provisions of Section 10 of the Proclamation dated the 10th June, 1891, as amended by Proclamation No. 17 of 1922.

16. I may say at once that having regard to the disreputable character of the man McIntosh and the deplorable effect which his mode of life must have had upon the natives, I felt considerable sympathy with Tshekedi's action, and I accept without reservation his statement that in taking the action he did he was actuated by a desire to serve the interests of his people; but his attitude as disclosed by the Inquiry that he was entitled to try in his Court and punish a European, and his claim that he was immune from the law prohibiting native chiefs from dealing with Europeans made it impossible for me to deal with his case by fine and rebuke. The principle at issue was so important, involving as it does a claim to be virtually independent, that no other course appeared open to me but to suspend him from the exercise of his functions as Acting Chief of the Tribe during His Majesty's pleasure. It is a matter for regret that such drastic action had to be taken in a case where the conduct of the European concerned had been such as to deprive him of any right to sympathy or consideration. I had no hesitation in deciding that neither McIntosh nor his associate, McNamee, was fit to live in a Native Reserve, and that their presence there was a danger to order and good government.

17. As regards the Inquiry into the alleged failure of the magistrates to take action upon complaints made by the Chief, I was, as stated above, satisfied that no ground was disclosed for action against the magistrates, and I accepted the view that the specific complaints of failure to act which were brought against the magistrates had been disposed of in the manner indicated in the Report. It will be observed, however, that Mr. Liesching has expressed the opinion that there is substance in the complaint lodged by the Acting Chief on the general ground that the conditions from which these specific incidents arose were a matter in which the responsibility for initiating remedial action rested with the Administration. In this context Colonel Rey has asked me to mention that at the time when the Inquiry was held he and Mr. Liesching had not before them the full facts and documents regarding certain administrative action taken by him in 1931 and 1932, which he has recorded in the following terms:—

> "The general question of illicit relations between Europeans and natives which is the root of the present trouble was taken up by me personally in Circular Minute of 28th September, 1931, addressed to all magistrates and medical officers drawing attention to the evil and instructing them to consult with the police officers and missionaries in their districts and their respective chiefs and forward to me their observations at an early date. Amongst the answers received there was one from Tshekedi to the magistrate dated 8th October, 1931, stating that the matter was not only difficult but delicate affair to approach, that he had commented on subject but that very small percentage of many such cases came to the notice of the magistrate, that he did not at present wish to go into details, that situation called for some action, but of what nature he was not able at that stage to suggest. In October, 1931, I informed European Advisory Council at the 15th Session that matter had been receiving my attention, with view to considering possibility of mitigating evil. After careful consideration of replies received to Circular Minute referred to above I prepared and submitted to the High Commissioner draft Proclamation dealing with the matter in October, 1932. After lengthy correspondence and consultation between High Commissioner and three Resident Commissioners at Pretoria it was finally decided by general agreement on the suggestion of the High Commissioner in February, 1933, owing to reasoned objection to proposed legislation to postpone further consideration for the time being. In view of the above statement of action taken and proposed by the Administration in regard to which Tshekedi was consulted and was unable to assist it cannot be contended that there was failure to act on the part of the Administration or that Tshekedi has legitimate grounds for complaint on this score. Obviously in the existing state of the law action in individual cases was limited to the comparative futility of removal of individuals from one district to

another, and the general position was affected by the general action proposed, and described above, which was known by all magistrates to be under consideration. With a view to amelioration of position and prevention of recurrence of present events I am resubmitting for immediate enactment draft Proclamation submitted by me in October, 1932, and I am issuing instruction to all magistrates that any case of actual or potential difficulty with Europeans in Native Reserves is to be reported immediately by the Chief to the magistrate and by him to me personally."

Colonel Rey considers that, in view of the circumstances disclosed above, it is difficult to contend that there was substance in the Acting Chief's complaints or that remedial action of a fundamental character was not considered and proposed by the Administration.

18. The proposed legislation to which Colonel Rey refers as having been under consideration was on the lines of the Immorality Act No. 5 of 1927 of the Union of South Africa. Notwithstanding the absence of such legislation, the High Commissioner has, of course, since the issue of Proclamation No. 15 of 1907, had the power to order any person who was dangerous to the peace of the Protectorate to confine himself within such limits as the High Commissioner might prescribe, and it was in the exercise of the powers conferred by that Proclamation that I gave directions for McIntosh and McNamee to be ordered to leave the Bamangwato Reserve and to be excluded from all other Native Reserves in the Protectorate. The question of the issue of a law on the lines of the Union Immorality Act No. 5 of 1927 will receive further consideration.

I have, &c.,
F. R. G. B. EVANS,
High Commissioner.

Enclosure 1 in No. 118.

REPORT OF THE COMMISSION APPOINTED TO INQUIRE INTO CERTAIN REPORTED OCCURENCES AT SEROWE ON 6TH SEPTEMBER, 1933.

(No. 6405.)

Palapye Road,
Bechuanaland Protectorate, 13th September, 1933.

SIR,

WE have the honour to report herewith on the Inquiry held at Palapye Road on the 13th September, under High Commissioner's Notice No. 145A of 1933.

2. At the outset it was explained by the Chairman that, for Administrative reasons, Captain G. E. Nettelton had requested leave to withdraw from the Commission with the approval of the Resident Commissioner, on the ground that in the course of his duties in the Protectorate as Magistrate he might have been connected, directly or indirectly, with matters coming within the scope of the Inquiry.

3. Evidence was given by P. W. McIntosh to show that he was concerned in a common assault upon a native named Ramanganeng, that he was summoned to appear at the Bamangwato Kgotla where the case was heard by the Acting Chief Tshekedi, and that he was sentenced to be flogged.

4. McIntosh in his statement was unable to say who actually used the sjambok, owing to the scuffle which ensued, but was of the opinion that the Chief's Policeman Madume flogged him whilst he was on the ground.

5. Evidence was given both by Mr. Germond, the Clerk to the Resident Magistrate, Serowe, and Doctor Morgan, the Medical Officer, both of whom examined the man P. W. McIntosh shortly afterwards, to the effect that wounds were found on his back similar to those which should have been caused by a sjambok or cane. In his evidence Dr. Morgan stated that one of the weals showed that blood had been drawn.

6. In the statement made by the Acting Chief Tshekedi at the Inquiry, he admitted trying the case in his Kgotla and giving the sentence of flogging.

7. His defence was made on various grounds. In the first place, he contended that the man McIntosh has an extremely bad character, that he lives amongst the tribe as a native, interferes with the native girls and has immoral relations with them, and that his (Tshekedi's) action was justified in meting out punishment and was in the best interests of the tribe.

8. Secondly, he challenged the legal position and claimed that he is immune from the provisions of Section 10 of Proclamation dated the 10th June, 1891, amended by Proclamation No. 17 of 1922.

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9. The Commission heard evidence at length from various witnesses which led them to the conclusion that the conduct of P. W. McIntosh and certain other European males, whose names were mentioned by these witnesses, was deplorable in its effect upon relations with the tribe, but no evidence was forthcoming that up to the time of the assault on Ramanganeng any offences had been committed which could be made the basis of a criminal charge, and that in the case of the assault referred to no complaint had been laid. The Chairman stated that the Administration had been and always would be prepared to institute criminal proceedings in each and every instance where a *prima facie* case could be made out.

10. After hearing evidence relating to the character and conduct of P. W. McIntosh, the Commission placed upon record their emphatic disapproval, and stated that, in the light of the evidence which they accepted as conclusive on this point, they would recommend in their finding the application, in the interests of peace and good order, of the powers possessed by the Administration, to prohibit McIntosh from entering or remaining in any Native Reserve.

11. With regard to certain allegations which were made by Acting Chief Tshekedi to the effect that his representations to the Administration with regard to the undesirable behaviour of McIntosh and other European males had been without effect, the Chairman stated that a further inquiry, to be held at the conclusion of the inquiry which forms the subject of this report, would be held immediately. The Inquiry, which would not be public, would be conducted by the Resident Commissioner and Mr. P. Lieseching, and that Acting Chief Tshekedi would be required to attend, accompanied, if he so wished, by his legal advisers.

12. It was shown to the satisfaction of the Commission that P. W. McIntosh, who is a European, was tried, convicted and flogged in the Chief's Kgotla and that this was done deliberately by the Acting Chief Tshekedi, who was fully aware that, as a Native Chief, he had no jurisdiction to deal with a case in which a European is concerned.

13. A verbatim record of the proceedings is attached.

We have, &c.,
H. NEALE.
P. LIESCHING.

His Excellency
The High Commissioner,
Cape Town.

Enclosure 3 in No. 118.

INQUIRY BY THE RESIDENT COMMISSIONER AND MR. LIESCHING INTO ALLEGED FAILURE OF THE RESIDENT MAGISTRATE, SEROWE, TO TAKE ACTION WITH REGARD TO COMPLAINTS LODGED BY CHIEF TSHEKEDI AS TO THE CONDUCT OF CERTAIN EUROPEAN RESIDENTS OF SEROWE, WEDNESDAY, 13TH SEPTEMBER, 1933.

WE opened the proceedings by stating that in the course of the correspondence, documents, and evidence submitted by Tshekedi, it appeared that he had certain grievances or complaints against the Magistrate of the District in connexion with this matter, particularly with regard to dealing with the Europeans, who were alleged to have caused trouble.

The Resident Commissioner pointed out that whatever complaints might be made against Officers of the Administration, it was, and always would be, the policy and intention of the Administration to investigate them, and that that was the occasion of the present inquiry.

The Resident Commissioner therefore asked Tshekedi if he would indicate any examples of laxity or neglect of duty on the part of the Magistrate in connexion with this matter.

The Chief definitely stated in evidence that he did not wish to bring any charges, or even complaint, against the Magistrate. We specifically asked him whether he considered there had been any laxity or neglect of duty on the part of the Magistrate. But he repeated that he was not making any complaint or charge against them, but that he was pointing out their " inability " to deal with the position.

He was pressed as to the meaning of this and it appeared that what he meant to convey was inability owing to statutory limitation, and reiterated that he had no com-

plaint to make against the Magistrate, and that he did not charge him with laxity or neglect of duty. The following extract from the verbatim report illustrates his attitude:—

"There is no reason why, because I dropped my action, the Magistrate should have dropped it too. He fully realized the state of affairs existing in the country. The last arrangement was that I should collect evidence. I accept that fact, but, as I said, I was very busy then. I have commenced afresh with the Magistrate, Captain Potts. I use the letters in evidence, and I definitely insist that firmer action should have been taken. In fact, when the question came up again, it came up from the Magistrate to me—although these lads are European. It was a complaint by Mr. Booker, who referred the question to me. I insist that further action should have been taken. But nothing further was done, and I have never raised any complaint about inaction, but what I say is that nothing was done. It is merely a fact. Nobody has any complaint against the Magistrate. All that I asked was that something should be done."

Before dealing with the evidence of the Magistrates we would desire to refer to the following information derived from official records submitted to us.

The trouble in connexion with McIntosh and McNamee originally arose in December, 1930, when the Resident Magistrate, Captain Nettelton, reported their case to the Government Secretary at Mafeking, and suggested that he, Captain Nettelton, should have them before him and warn them that they would be evicted from the Reserve unless they gave up their bad habits. Captain Nettelton stated that he did not wish to do this until he was certain what steps could be taken against them under the existing law (presumably in regard to evicting them from the Reserve).

He was informed by the Government Secretary that they could not be deported from the Territory as they were born in the District, but that "they should be curbed, and that it should be possible for the Police successfully to deal with their case."

On the 30th December, 1930, the Magistrate (Captain Nettelton) reported further misbehaviour on the part of these people, and stated that he proposed to invite Tshekedi to bring all his witnesses and to talk to McNamee and McIntosh. He stated that he was working not with the object of making them habitual criminals, but with a view to making some attempt to turn them into useful citizens, and that this could only be brought about in some place other than a Native Reserve. With this object in view efforts were being made to find them employment elsewhere.

On the 8th January, 1931, the Government Secretary informed the Magistrate that the provisions of Proclamation No. 8 of 1929 were inapplicable, and that he doubted whether the powers of deportation conferred by Section 4 of Proclamation No. 15 of 1907 could be invoked in this instance.

The next incident which arose was in 1932, when Captain Nettelton, Magistrate of the District, on the 28th April, made a report suggesting that there should be an inquiry into the matter, that drastic action was required in the interests of everybody, that Tshekedi had told him that he could produce any amount of evidence, and that he, the Magistrate, considered it very undesirable to let the matter rest.

On the 9th May, 1932, the Acting Government Secretary, on the instructions of the Acting Resident Commissioner, Captain Reilly, informed the Magistrate that an inquiry should be held, and that Proclamation No. 8 of 1929 appeared to be the relevant law. The matter had been submitted to the Crown Prosecutor on the 30th April, who had, on the 2nd May advised this course.

The above is a summary of the information obtained from the official records referred to.

At the inquiry Captain Nettelton stated in evidence that he had relieved Captain Potts at Serowe from March to September, 1932. At that time the Chief was busy with the Mineral Concession. He was very often away from Serowe and the Magistrate stated that, if he recollected correctly, he (the Chief) was away from Serowe for a period of three months at one time.

The Magistrate stated that he informed the Chief that the inquiry was to be held and the Acting Chief stated that he would bring forward his evidence. As far as Captain Nettelton is concerned, it ended there.

The Acting Chief was away from about June to August, 1932.

The Magistrate concluded by saying that he wished to make it clear that he accepted no responsibility as he had left the matter with the Chief to bring forward the evidence, and that the Chief had not done so.

Tshekedi stated in evidence that he agreed that the last arrangement was that he should collect evidence and accepted that fact, but stated that he was very busy

then. Later on he stated that he did not see why because he dropped his action the Magistrate should have dropped his too. (See extract from evidence quoted earlier in report.)

From this date, i.e., May, 1932, no further development seems to have been recorded or reported until March, 1933.

From the evidence it appears that this latest complaint against these men was raised in writing by Mr. Booker, a European. His letter was dated 27th March, 1933, and was promptly taken up by the Magistrate in a letter dated 29th March, in which he asked the Chief: (1) To cause the native women concerned to be cleared out of the house, and (2) to notify McNamee and McIntosh that their presence in Serowe was undesirable. The Chief replied on the 7th April to the effect that had the men been natives he would have dealt with them before, that he had reported them to the Magistrate, and that he was "disheartened" because he was asked to "collect evidence against them" (presumably referring to the 1932 incidents).

He suggested that it was for the Magistrate to take steps against them, pointing out that it was useless to remove them from Serowe to outside villages because their influence would be worse there.

On the 15th April the Magistrate replied to the Chief, reiterating his suggestion and saying that if the Chief did not feel able to do this he would send for the men, but that it was the Chief's province to deal with the native women.

On the 18th April the Chief replied to the Magistrate, saying that there was no object in returning the girls to their homes, and that the matter needed the Magistrate's further consideration and action.

On some later date in April (the exact day is not recorded) the Magistrate sent for McIntosh and, according to his own statement given in evidence, "administered to him, I think, the severest reprimand that I have ever administered to a European during the whole of my public service." The original documents bear the endorsement, "I sent for McIntosh and severely rebuked him, and warned him that he would be put out of the Reserve. Mr. Germond present."

The Magistrate did not pursue the matter after this, as the complainant, European (Mr. Booker), stated that the nuisance had abated, and that this, as far as he (the Magistrate) was concerned, was the close of the incident.

The Magistrate further stated in evidence that action had, on several previous occasions, been taken against these Europeans, and handed in a list of Court cases in which the men had been dealt with from 1930 to 1932. These included a case in which one of the men had actually served a sentence of imprisonment with hard labour.

The Magistrate further pointed out that during his term of office at Serowe no cases of assault by McIntosh or McNamee were actually brought before him, although his Assistant Magistrate heard one case in December, 1931. No cases had recently been reported.

He went on to say that at Christmas, 1931, there had been a disturbance caused by certain Europeans. Investigations had been made, but it had not been possible to affix definite responsibility to any particular individual, but that there were suspicions as to the culprits. In order to avoid a recurrence of this at Christmas, 1932, Captain Potts warned three Europeans, including the two mentioned in the present inquiry, as to their behaviour; and, as a result, no disturbance in fact took place on that occasion.

After the conclusion of the evidence recorded in the report, Tshekedi was asked whether he wished to make any further statement or ask any further questions. He replied in the negative.

It thus appears that the misconduct of these youths was reported by the Magistrate to Head Office on two occasions:—

(i) In December, 1930, when certain instructions were given to the Magistrate (Captain Nettelton), by Head Office;

(ii) In April, 1932, when Captain Nettelton asked for an inquiry, was instructed to hold it, but it fell through owing to the non-production of evidence asked for from the Chief who was very busy, and who was absent for the following three months.

The third occasion when trouble arose was on 27th March, 1933, when the Magistrate (Captain Potts) dealt with the matter by (*a*) correspondence with the Chief, and (*b*) severely rebuking the offender.

It appears further from documents handed in in evidence that during the period 1930-1932 Police action against these men was taken on a number of occasions.

In view of the facts cited above, derived from the official records and from evidence tendered to us we find that:—

(1) Tshekedi makes no allegation of laxity or neglect of duty against the Magistrate, nor indeed any complaint against him;

(2) Tshekedi desires to record as a matter of fact the "inability" of the Magistrate to deal with the nuisance;

(3) Captain Nettelton took all reasonable steps to deal with the trouble in 1930 and 1932, and that the non-holding of an inquiry in 1932 was due to the absorption of the Acting Chief in other matters and his prolonged absence, at the end of which there was a change of Magistrates;

(4) Captain Potts took all reasonable steps to deal with the earlier troubles;

(5) In regard to the trouble in March, 1933, Captain Potts was justified in considering that that particular incident was closed owing to the action he had taken in corresponding with the Chief and reprimanding the offender, and the fact that the complainant had reported that the nuisance had ceased;

(6) The confidential document, dated 8th October, 1931, handed in by Captain Potts at the inquiry, indicates the serious view he took of intercourse between Europeans and Natives, and the drastic measures he recommended for dealing with the evil;

(7) It is unfortunate that each ground for complaint as it arose should not have been brought to the personal attention of the Resident Commissioner on its being received at Mafeking, or by the Acting Chief on the occasion of the Resident Commissioner's visits to Serowe; as the Resident Commissioner, by virtue of his authority and position would have been able to deal with the matter in a more summary manner than those occupying a subordinate position.

We would add that it is, in our view, highly unfortunate that—

(1) No powers existed prior to the Immigration Proclamation of 1932 to regulate the entry into the Territory of undesirable persons;

(2) No powers exist to remove from the Territory persons, however undesirable, who have been born there;

(3) There is a fairly large proportion of undesirable persons, European and semi-European, not only in Serowe but in other districts of the Territory.

Up till 1932 it was consequently possible for almost anyone to settle in the Territory, and as they could not be ejected it appears to have been felt that it was of comparatively little avail to move them about from one district to another.

In associating himself with the Resident Commissioner in this report, Mr. Liesching records that, while the specific complaints of failure to act which had been brought against the Magistrates have been disposed of at the inquiry in the manner indicated in this report, he is of opinion that there is substance in the complaint lodged by the Acting Chief on the general ground that the conditions from which these specific incidents arose were a matter in which the responsibility for initiating remedial action rested with the Administration, irrespective of particular complaints by the Acting Chief, and that it appears that such remedial action of the fundamental character required was not in fact taken by the Administration.

A verbatim record of the proceedings is attached.

C. F. Rey,
Resident Commissioner.

P. Liesching.

Palapye Road,
13th September, 1933.

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No. 119.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 9th October, 1933.)

(Bechuanaland Protectorate.)
(No. 683.)
(Confidential.)

High Commissioner's Office, Cape Town,
26th September, 1933.

Sir,

With reference to my despatch No. 682* of to-day reporting upon the events leading up to the suspension of Tshekedi Khama from the acting chieftainship of the Bamangwato Reserve, I have the honour to transmit herewith a copy of a memorandum submitted to me by Mr. P. Leisching setting out the basis on which he formed the opinion expressed by him at the conclusion of the Report upon the Inquiry by the Resident Commissioner and himself into the alleged failure of the magistrate at Serowe to take action with regard to complaints lodged by Acting Chief Tshekedi as to the conduct of certain European residents of Serowe.

2. I have communicated to the Resident Commissioner a copy of the enclosed memorandum and have requested him to furnish at the earliest possible date his observations dealing in detail with the various points mentioned by Mr. Liesching.

I have, &c.,
E. R. G. R. EVANS,
High Commissioner.

Enclosure 1 in No. 119.

Memorandum.

The High Commissioner for South Africa.

1. In the report signed by the Resident Commissioner and myself at Palapye Road, Bechuanaland Protectorate, on the 13th September, stating the results of the inquiry held that day into the allegations of Acting Chief Tshekedi that the Resident Magistrate, Serowe, had failed to take action on complaints made by him, the following passage appears:—

> "In associating himself with the Resident Commissioner in this report Mr. Liesching records that, while the specific complaints of failure to act which had been brought against the magistrates have been disposed of at the inquiry in the manner indicated in this report, he is of opinion that there is substance in the complaint lodged by the Acting Chief on the general ground that the conditions from which these specific incidents arose were a matter in which the responsibility for initiating remedial action rested with the Administration, irrespective of particular complaints by the Acting Chief, and that it appears that such remedial action of the fundamental character required was not in fact taken by the Administration."

2. It is right that I should set out the basis on which I formed this opinion. The opinion was based in part upon the verbal evidence given in the course of the inquiry and in part upon certain confidential documents which were made available to me.

3. The documents in question, which are annexed to this memorandum, are as follows:—

Annexure A. Captain G. E. Nettelton, Resident Magistrate, Serowe, to Government Secretary, Mafeking, dated 9th December, 1930.

Annexure B. Government Secretary to Resident Magistrate, Serowe, dated 23rd December, 1930.

Annexure C. Resident Magistrate, Serowe, to Government Secretary, dated 30th December, 1930.

Annexure D. Government Secretary to Resident Magistrate, Serowe, dated 8th January, 1931.

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* No. 118.

Annexure E. Captain J. W. Potts, Resident Magistrate, Serowe, to Resident Commissioner, dated 8th October, 1931.
Annexure F. Captain Nettelton, Resident Magistrate, Serowe, to Government Secretary, dated 28th April, 1932.
Annexure G. Acting Government Secretary to Crown Prosecutor, dated 30th April, 1932.
Annexure H. Crown Prosecutor to Acting Government Secretary, dated 2nd May, 1932.
Annexure I. Acting Government Secretary to Resident Magistrate, Serowe, dated 9th May, 1932.

4. I offer the following comments on the first incident (December to January, 1930). The Resident Magistrate's report (Annexure A) arising from complaints by Tshekedi, appears to me to be in every respect a proper one, in that it drew attention to the serious nature of the conditions created by the misbehaviour of the two Europeans in question, and in particular raised the question of their eviction from the Reserve under Proclamation No. 5 of 1929.

5. The reply from Mafeking (Annexure B) recommended special attention from the Police with a view to action under certain sections of the Police Offences Act (Cape of Good Hope) of 1882. It is clear that at this stage Headquarters at Mafeking were of opinion that the trouble could be remedied by local action, and that eviction from the Reserve need not be seriously considered. As this appears to have been the first complaint as to the difficulty of dealing with the offenders, this attitude is not, in my view, open to criticism. It seems unfortunate, however, that the reply should have misinformed the Resident Magistrate as to the legal position with regard to the powers of the Administration to remove the offenders from the Reserve, for he had rightly asked for guidance on the point in order to know what warning as to the possibility of eviction he could give the offenders in his efforts to curb their activities. The statement "They cannot be deported" appears to me to ignore the powers possessed respectively by the Resident Commissioner and the High Commissioner under Proclamation 8 of 1929, Section 2, and Proclamation 15 of 1907, Section 3.

6. In his reply to this communication the Resident Magistrate (Annexure C) rightly drew attention to the fact that, though deportation from the Protectorate was impossible, removal from the Reserve was, in his view, the only possibility of remedying the evil in the interests both of the offenders and the Natives. He explained the cunning of the former in evading prosecution and reiterated his hope that Headquarters would support him in his proposal to warn them as to eviction, and, if necessary, to evict them from the Reserve. This report from the Resident Magistrate should have left Headquarters in no doubt as to the seriousness of the situation, for it specifically indicates that the offenders were deliberately defying the Chief and speaks explicitly of the wider issues involved for European prestige and morale.

7. The reply from Mafeking (Annexure D) to a report of this grave character seems to me to be in some respects unsatisfactory. After expressing the hope that minor corrective action (which the Magistrate had already stated was inadequate) would be effective, this reply repeats the statement, the accuracy of which seems to me doubtful, that Proclamation 5 of 1929 is inapplicable and expresses doubt whether Section 4 of Proclamation No. 15 of 1907 (which provides for deportation from the Protectorate) could be invoked. It appears to me that proper attention to the gravity of the situation and to the Proclamations cited would have led to a fuller examination of the legal position. In particular the citing of Section 4 of Proclamation No. 15 of 1907, under which deportation from the Protectorate is dependent on the consent (obviously not easily to be obtained) of another Administration to receive the deportee, is difficult to understand, seeing that the preceding section (Section 3) provides the High Commissioner with clear powers, which have in fact, on several occasions been exercised, to confine the offenders within any specified area of the Protectorate where their mischievous conduct would have ceased to have the specially damaging effects so clearly seen in the Bamangwato Reserve.

I should state here that the documents shown to me indicate that the correspondence was not brought to the notice of the High Commissioner at any stage. It is not revealed in the documents whether or not they were brought to the personal notice of the Resident Commissioner.

Before passing to the second incident (April-May, 1932) it is desirable to notice the confidential memorandum on the general question of cohabitation between Europeans and Natives sent to the Resident Commissioner by Captain J. W. Potts, Resident

Magistrate, Serowe, in October, 1931 (Annexure E). This was in response to a circular by the Resident Commissioner, and was not apparently related directly to any specific complaints as to the conduct of the Europeans concerned. I draw attention to it as showing that Captain Potts, who succeeded Captain Nettelton at Serowe between the first and second incidents, was strongly in favour of prohibitive legislation to check the evil. This proposal was, I believe, given most careful consideration by the Resident Commissioner and the High Commissioner in consultation. In the present context I wish to invite attention to the fact that Captain Potts said: "It is quite clear that Tshekedi is unwilling to launch a campaign against offending Europeans . . . . It therefore behoves the Administration to act, and, in acting, I submit that in a native territory we cannot deal with a question of this sort by compromise."

The second incident (April to May, 1932) arose when Captain Nettelton, who was acting for Captain Potts during the latter's absence on leave (10th April, 1932, to 3rd October, 1932), submitted a report (Annexure F) to Mafeking. He characterized the conduct of McIntosh and McNamee as "certainly prejudicial to the interests of the natives in the Reserve." He described reprimands—the course of action to which he was encouraged by Mafeking in January, 1931 (Annexure D)—as "simply a waste of time," and recommended drastic action after an inquiry. He said that evidence existed in abundance and placed it definitely on record that he considered it very undesirable to let this matter rest.

Headquarters at Mafeking asked the Crown Prosecutor's opinion as to whether the offenders were exempt from Proclamation No. 8 of 1929 owing to their having been born in the Serowe District, if so, would Proclamation No. 15 of 1907 meet the case (Annexure G).

I regard it as highly unsatisfactory that the Crown Prosecutor's reply (Annexure H) should have started with the erroneous statement that Proclamation No. 15 of 1907 had been repealed. It has, in fact, never been repealed since its enactment.

On the applicability of Proclamation No. 8 of 1929, the Crown Prosecutor expressed no final opinion on the vital point whether the offenders were exempt from removal from the Reserve on the ground that they "lived in the district in the exercise of any rights held by them under any law." He said that "on the face of it they did not." His further recommendation that an inquiry should be held "to have some evidence of their mode of life," desirable though such an inquiry might have been, was not likely to throw any light on the point of law.

On receipt of the Crown Prosecutor's minute, Mafeking informed the Resident Magistrate (Annexure I) that an inquiry should be held before a decision was reached as to the action to be taken.

As was shown in the oral evidence, Captain Nettelton requested Tshekedi to produce evidence, but owing to the latter's preoccupations, involving absence from the Protectorate for considerable periods, he failed to do so. No further action was taken by Captain Nettelton or by Captain Potts, who resumed duty at Serowe three or four months later.

The correspondence on these complaints (described as the second incident) was never seen by the Resident Commissioner until the 12th September, 1933. He was absent on leave when it originated, and returned to duty in October, 1932.

My conclusions on this second incident are that the Resident Magistrate took all proper steps to ensure that he should be authorized to take drastic action; that Mafeking, though misled by the inexcusably erroneous opinion on Proclamation No. 15 of 1907, might have been expected to have insisted on a clear opinion with regard to the applicability of Proclamation No. 8 of 1929; that responsibility fairly rests with Mafeking that Captain Nettelton, in view of the attitude of Headquarters both on the strong reports put in on this occasion and on the previous occasion (1930-1931), did not pursue the matter further when Tshekedi failed to produce evidence; that these considerations apply equally to Captain Potts when he resumed duty in September, 1932; that the correspondence should, in the absence of the Resident Commissioner, have been brought to the notice of the High Commissioner; that if, through an error of judgment, this was not done, the correspondence should undoubtedly have been brought to the notice of the Resident Commissioner on his return from leave in October, 1932, for a decision as to whether the Administration should not proceed on its own initiative, notwithstanding the failure of Tshekedi to produce evidence.

On the third incident (March-April, 1933), it was shown in oral evidence that following upon correspondence between Tshekedi and Captain Potts, the latter administered a most severe reprimand to the offenders.

It might be held that this should have been reported to Mafeking in view of the previous reports made on the same subject. On the other hand, the replies received by

the Resident Magistrate on the previous occasions had specifically encouraged local action of the kind taken by Captain Potts, and had held out no prospect of the more drastic action which both he and Captain Nettelton had strongly recommended

P. Lieschig.

Cape Town,
22nd September, 1933.

Annexure A.

The Government Secretary,
Mafeking.

I have been requested by the Chief Tshekedi to bring to your notice for submission to His Honour the Resident Commissioner the question of certain two young Europeans in this district who are interfering with the native people.

The young men referred to are:—

Henry McNamee	... ...	aged 18
Phineas McIntosh, Jnr.	... ...	aged 20

and they are the sons of Europeans of this village who are men of good character. This question is one which has troubled me for some considerable time, and I cannot see what steps to take unless the provisions of Proclamation No. 8 of 1929 will meet the case.

These two lads roam about the village at nights—drink beer and get intoxicated—seduce women and girls and generally defy the laws of the Chief and Headmen. Henry McNamee has been convicted twice in this Court and Phineas McIntosh once, but they are both cunning and have managed to avoid serious trouble.

Henry McNamee has asked whether I can get him employment, and I told him that I would see whether he could perhaps be taken on as a European labourer on the railways. I should be glad to be furnished with the conditions of employment, &c.

I think that these two men should be called upon to appear before me, and I should warn them both that they will be evicted from the Reserve unless they give up their bad habits. I do not want to do this until I am certain that steps can be taken against them, and on this point I shall be glad to be informed.

G. E. Nettelton,
Resident Magistrate.

Serowe,
9th December, 1930.

Annexure B.

The Resident Magistrate,
Serowe.

H. McNamee and P. McIntosh.

With reference to your minute of the 9th December, I have been in communication with Mr. Clark, the District Engineer, as regards their chances of employment on the Railway. Mr. Clark informs me that there is not much hope of their being employed by the S.A.R., who, as you know, have charge of the line through the Protectorate. He will, however, speak to the System Manager when he visits Kimberley shortly and see what he can do. But he explains that all unskilled labour on the line in this section is native, the white men are the skilled labourers. He suggests that you write to the G.M. Rhodesia Railways at Bulawayo, as he thinks that the R.R. employ white unskilled labourers, and the boys may get a chance there. Mr. Clark will advise if he is able to do anything further.

As regards the behaviour of these boys, the Assistant Resident Commissioner to whom your Minute has been shown does not understand why, if they behave as you state in the third paragraph of your minute, the Police do not take action under one or other of the sections of Part II of the Police Offences Act, No. 27 of 1882, which is in force in the Bechuanaland Protectorate, and has requested that their attention be drawn to Sections 7 (12), 8 (3) (5), 9 and 10, which would appear to be the machinery under which the Police could act. It is noted that the youths in question have been up before you, but it seems that the Police should give these cases special attention. If they are sentenced again to imprisonment it might be possible to send them to one of the other Gaols—Francistown or Gaberones, to serve their sentences, and this might have some good effect upon them. In any case it should be possible for them to be dealt with by the authorities on the spot.

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They cannot be deported as they belong to the District (I understand were born there) but they should be curbed, and it should be possible for the Police successfully to deal with their case.

H. H. Price
(for Government Secretary).

Mafeking,
23rd December, 1930.

Annexure C.

The Government Secretary,
Mafeking.

H. McNamee and P. McIntosh.

With reference to your minute No. 2508 of the 23rd December last on the above subject, I note the contents of the first paragraph. Regarding possible employment on the Rhodesian Railways I would observe that Henry McNamee (aged 21) has already been deported from Southern Rhodesia for stealing a motor car, and for which offence he served one month in Bulawayo Gaol.

You rightly observe that these two boys were born here, and they are our legacy for all time. For this very reason I am not working with the object of making them habitual criminals—they are on the way to that state. I desire to make some attempt to turn them into useful citizens, and they will only do this in some place other than a Native Reserve.

McNamee and McIntosh are possessed of considerable cunning, and the prosecution has failed in several cases in bringing home to them crimes undoubtedly committed by them. I am aware of the possibilities of prosecution under the Police Offences Act, which had been used already. I will instruct the Police to give special attention to them, but I am not in favour of putting these two boys in gaol if it can be helped.

When I wrote to you I sought to be placed in a position to call them before me and administer to them a severe warning about deportation, and it would enable me to bring this to the notice of their parents (who like all parents believe nothing about their children which is bad).

The Chief has complained that these youths are interfering with the domestic affairs of natives in a Native Reserve, and I contend that there should be some means of ejecting them. It is not pleasant to contemplate either of them figuring as co-respondent in a native divorce case or in an action of affiliation. It is bad for European morale in the district, and for offences such as seduction and adultery no Police action can be taken.

I have warned them several times and on the last occasion Henry McNamee, who professed complete repentance, on the same day went and defied Tshekedi's laws by telling a crowd of native girls and women who were creating a disturbance by night, and had been stopped by Tshekedi's orders, to carry on and take no notice, which they duly did until day dawned.

On Xmas Eve some persons who were undoubtedly Henry McNamee and McIntosh celebrated the occasion by firing off sticks of dynamite at people's front entrances at 1 a.m. The effect on ordinary people, of a nerve-shattering explosion in close proximity, is better imagined than described. I have got the Police to take the matter up but there is little evidence.

These lads are up to all sorts of tricks, which are most difficult to detect.

I am unable to sentence to cuts under the Police Offences Act.

I now propose getting Tshekedi to bring all the witnesses, and I will talk to McNamee and McIntosh.

G. E. Nettelton,
Resident Magistrate.

Ngwato District,
30th December, 1930.

Annexure D.

(Confidential.)
The Resident Magistrate,
Serowe.

H. McNamee and P. McIntosh.

I have received your minute of the 30th December and note that you will talk to these youths. I trust that this step may have the desired effect, but I suggest that

in addition you should see their parents and inform them of your anxieties in the matter.

I have already said that the provisions of Proclamation No. 8 of 1929 are inapplicable, and I doubt whether the powers of deportation conferred by Section 4 of Proclamation No. 15 of 1907 could be invoked in this instance, but undoubtedly such behaviour as you report on the part of McNamee and McIntosh if persisted in, might in course of time justify the enactment of some other drastic measure to remedy the case.

I share your distaste for the possible consequences of having to commit these youths to gaol or for their becoming involved in some unpleasant native suit. I think, however, that it would be best to allow any police prosecution which may be possible to take its course, in which event you will doubtless have regard to the powers conferred on you by Section 4 of the Proclamation 81 of 1921.

H. H. PRICE
(for Government Secretary).

Mafeking,
8th January, 1931.

ANNEXURE E.

(Confidential.)
His Honour the Resident Commissioner.

MISCEGENATION.

WITH reference to Your Honour's Confidential minute No. 3909 of the 28th ultimo, I now attach copies of communications received from the Rev. A. Sandilands and the Chief Tshekedi on this subject.

As Tshekedi says, a very small percentage of cases come to public notice and a good many illicit unions produce no offspring, but as the Rev. Sandilands justly maintains, the offence is none the less heinous.

To my mind nothing short of prohibitive legislation will have any effect. Such a law would need very careful drafting. For instance, Clark, the motor garage man at Serowe, is actually married to a native woman according to native custom, in Kgotla. This is wrong in principle—what standing can the offspring, if any, have except that of a nondescript coloured person or a native? Administrative action can avail very little in the way of a deterrent, and I doubt if it would be practicable.

It is quite clear that Tshekedi is unwilling to launch a campaign against offending Europeans, and probably other Chiefs have the same feelings about the subject. It, therefore, behoves the Administration to act, and in acting I submit that, in a native Territory, we cannot deal with a question of this sort by compromise. No doubt conditions have improved in the last fifteen years or so since communications have been opened up and living conditions for European women have improved, but personally I think that a law should be framed in such a way as to make either promiscuous intercourse or marriage between Europeans and Natives illegal, and provision made for the maintenance of any offspring from such unions.

Of course it is even now open to any native woman to sue for maintenance, but I have only one such case in mind and it was brought against a policeman in this place some years ago and failed—the offspring, on production, being as black as a coal!

J. W. POTTS,
Resident Magistrate.

Serowe,
8th October, 1931.

ANNEXURE F.

(Confidential.)
The Government Secretary,
Mafeking.

Phineas McIntosh, Jnr., and Henry McNamee—Desire of Chief for Expulsion from Reserve.

THE Acting Chief Tshekedi has requested that I will lay before His Honour the Resident Commissioner the matter of certain young European men who live in Serowe with a view to having them expelled from the Bamangwato Reserve, under Proclamation No. 8 of 1929

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These two young men are well known to me and I see no other course open than to remove them from this Reserve where they are certainly "prejudicial to the interests of the natives living therein." There has been endless trouble with Phineas McIntosh and Henry McNamee. They have not the slightest respect for the law of the Administration or that of the Chief. They have been implicated in all sorts of undesirable affairs. There is evidence which is so abundant that it would be tiresome to recapitulate it all.

The main complaint against these men is that they are living and co-habiting with natives. They have been responsible for producing several half-caste children and I am informed by the Chief that they live with one native girl and when she becomes pregnant she is cast off and another one taken.

They are constantly mixed up in petty assault cases. One of their achievements is assaulting a policeman.

I should mention that the parents of both these youths, both of whom were born in Serowe about 21 years ago, are resident here. They have no control whatever over their sons, who would assault them if they made any attempt in that direction.

Captain Potts has had the same trouble as I have experienced with these people.

On a former occasion I was directed to have them up and reprimand them. It was simply a waste of time and I emphasised that drastic action is required in the interests of everybody.

Neither of these men does any work if he can avoid it. McIntosh's parents are very respectable people who work for their living—there is no assistance forthcoming from their son. McNamee's parents are not a good type, but they do not give a great deal of trouble.

On the occasion of two Old Year's nights in succession now these youths have amused themselves by letting off sticks of blasting jelatine at people's front doors. It has to be experienced to be appreciated.

Tshekedi states, what is known to me, that he can produce any amount of evidence, and if it is considered expedient to do so before taking any action it might be advisable to have an inquiry in the presence of the two men. This action might have a very chastening effect upon quite a number of other not very respectable inhabitants of this Reserve.

I place it on record that I consider it very undesirable to let this matter rest. It is not creditable to the European race.

G. E. NETTELTON,
Resident Magistrate

Serowe,
28th April, 1932.

ANNEXURE G.

The Crown Prosecutor.

I SHOULD be glad of your opinion on this case. Does the fact that the two men were born in the Serowe district exempt them from the provisions of Proclamation 8 of 1929? If so, would Proclamation 15 of 1907 meet the case?

D. W. How,
Acting Government Secretary.

Mafeking,
30th April, 1932.

ANNEXURE H.

The Acting Government Secretary.

PROCLAMATION 15 of 1907 was repealed by Proclamation 30 of 1930. Whether the two men are exempt from the provisions of Proclamation 8 of 1929 would depend on whether they live in the Serowe District in the exercise of any right. On the face of it they do not, but as they have been tolerated for so long it would be advisable for the Resident Magistrate to hold an inquiry and to have some evidence on their mode of life to justify the Resident Commissioner in making an Order. The Chief can produce the necessary evidence, no doubt.

S. A. MINCHIN,
Crown Prosecutor.

Mafeking,
2nd May, 1932.

ANNEXURE I.

(Confidential.)
The Resident Magistrate,
Serowe.

YOUR minute of the 28th April regarding Phineas McIntosh and Henry McNamee. Before deciding what action is to be taken His Honour would like you to hold the inquiry as suggested in paragraph 5, page 2, of your minute.

D. W. How,
Acting Government Secretary.

Mafeking,
9th May, 1932.

10817/26.

No. 120.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 4.55 p.m., 9th October, 1933.)

[*Answered by No.* 121.]

No. 108. YOUR telegram of 6th October, No. 128,* appears to have crossed my telegram of 6th October, No. 106.† I should be glad to learn as soon as possible what is Tshekedi's reaction to communication proposed in my telegram No. 106.—THOMAS

10817/28.

No. 121.

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 2.15 p.m., 11th October, 1933.)

[*Answered by No.* 122.]

11TH OCTOBER. No. 132. Your telegram of the 9th October, No. 108.‡

1. Bathoen has also renewed request for permission to go to England on the lines of Tshekedi's request as communicated to you in my telegrams Nos. 126§ and 128.* Copy of message to Tshekedi in your telegram No. 106† has been given to Bathoen.

2. Resident Commissioner advised me yesterday by telegraph that Tshekedi was travelling to Cape Town. He is due to arrive here to-morrow.

3. According to Reuter's statement published in the Press here which summarized message in your telegram No. 106 and interpreted it as refusal to allow Tshekedi to go to England, Buchanan and Jennings will nevertheless sail 13th October "to seek advice from authorities in England and to place Tshekedi's views fully before those authorities." Statement appears to have been inspired by Jennings.

4. I have received this morning letter from Buchanan saying that he has received from Tshekedi full text of your message and that this does not appear to be an absolute refusal to permit Tshekedi to proceed to England. He asks on behalf of Tshekedi and as matter of urgency for my decision on this point, as if I will permit the Chief to leave 13th October as he wishes to do, having provisionally booked passage, he desires to notify the Chief immediately.

5. Buchanan is being told that I cannot receive representations from Tshekedi other than through proper official channels and that the Chief must submit any communication he wishes to make to me or you through the Resident Commissioner.

* No. 115. † No. 116. ‡ No. 120. § No. 114.

6. I should be glad of your instructions whether I am to refuse passport or travelling certificate to enable Tshekedi or Bathoen to proceed to England

7. Resident Commissioner has just reported outbreak of dysentery in Bangwaketsi Reserve and that large numbers of cattle are dying from poverty. As local conditions will probably grow worse he considers the present is not suitable time for native chiefs to be away from their people.—HIGH COMMISSIONER.

10817/28.

No. 122.

TELEGRAM

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Sent 7.30 p.m., 11th October, 1933.)

No. 111. YOUR telegram No. 132 of 11th October.*

Tshekedi, and if necessary Bathoen, should be informed that the message conveyed in my telegram No. 108† was meant to make it clear that their proper course was to await return of Sir Herbert Stanley and to discuss with him any matters arising out of the draft Proclamations which they wished to discuss.

I consider it duty of both Chiefs in present situation to remain with their tribes, and they should be given clearly to understand that for them or either of them to come to England now would be contrary to my express wishes and that I should not be prepared to discuss draft Proclamations with them.—THOMAS.

20283/99.

No. 123.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 23rd October, 1933.)

(Bechuanaland Protectorate.)
(No. 718.)

High Commissioner's Office,
Cape Town, 10th October, 1933.

SIR,

WITH reference to my telegram No. 126 of the 4th October‡ informing you that I had reinstated Tshekedi Khama as Acting Chief of the Bamangwato, I have the honour to submit the following report.

2. Upon receipt of your telegram No. 98 of the 28th September§ I arranged for the publication in the South African Press on the 29th September of the public announcement which you had decided should be issued. I also wrote to Tshekedi notifying him that His Majesty the King had been graciously pleased to terminate the period during which he was suspended from the exercise of the functions of Acting Chief of the Bamangwato, and also the operation of the order requiring him to reside in the Tati district. The text of my letter, of which I attach a copy, was telegraphed to Tshekedi who, with my permission, was travelling to Cape Town to consult his legal adviser, Mr. D. M. Buchanan, K.C.

3. Tshekedi arrived here on the afternoon of Friday, the 29th September. He called on the Administrative Secretary the following morning and inquired whether arrangements could be made for him to have an interview with me, now that his suspension had been terminated, in order that he might pay his respects. I received him at Simonstown on board H.M.S. *Dorsetshire* and enclose a memorandum recording the substance of my conversation with him.

4. As I was of opinion that the formal ceremony of reinstatement at Serowe ought to take place at the earliest possible date, I arranged to leave Cape Town for

* No. 121. † No. 120. ‡ No. 114. § 20283/79: not printed.

Palapye Road and Serowe on the morning of the 2nd October; it had previously been ascertained that Tshekedi would be ready to proceed by the same train. I was accompanied by Mr. S. Eales, C.B.E., Administrative Secretary, Captain L. Holbech, D.S.O., M.C., Private Secretary, Flag-Lieutenant N. Mackinnon, R.A.N., and Lieutenant R. F. Low, R.A.N. The Resident Commissioner joined my train at Mafeking.

5. The ceremony of reinstatement took place at Serowe at noon on Wednesday the 4th October, in the presence of the Resident Commissioner, my staff, officers of the Administration, the European community at Serowe, and a large assembly of Natives. I enclose a copy of my speech. At its conclusion I shook hands publicly with Tshekedi.

6. Later, Tshekedi called at the Residency, accompanied by several of his followers, and I had a brief interview with him in the presence of the Resident Commissioner, the Administrative Secretary, and the Resident Magistrate (Captain Potts). As reported in my telegram under reference, his object in seeking the interview was to renew his request for permission to proceed to England as soon as possible in connexion with the Draft Native Proclamations now under consideration. The reply to his request conveyed in your telegram No. 106 of the 6th October* was transmitted to the Resident Commissioner by telegraph on the 7th October for communication to Tshekedi.

7. I left Palapye Road on the evening of the 4th October and arrived at Cape Town on the 6th October.

I have, &c.,
E. R. G. R. EVANS,
High Commissioner.

Enclosure 1 in No. 123.

High Commissioner's Office,
Cape Town, 28th September, 1933.

TSHEKEDI KHAMA,

I RECEIVED through His Honour the Resident Commissioner your message of the 21st September which you handed to the Resident Magistrate at Francistown for transmission to me, and I communicated its text to the Secretary of State for Dominion Affairs by telegraph.

In view of the statement in your communication—

(i) that you have abandoned any right to deal with a case in which a European is concerned;

(ii) that you did not and will not claim to be immune from the law of the Protectorate; and

(iii) that you will at all times work in harmony and loyal co-operation with the Administration.

I, with the advice of the Resident Commissioner, recommended to the Secretary of State for Dominion Affairs that His Majesty should be advised to terminate forthwith the period during which you are suspended from the exercise of the function of Acting Chief of the Bamangwato.

The Secretary of State for Dominion Affairs has concurred in my recommendation and has advised His Majesty accordingly.

In accordance with the advice received by him from the Secretary of State, His Majesty has been graciously pleased to terminate the period during which you are suspended from the exercise of the functions of Acting Chief of the Bamangwato, and also the operation of the order requiring you to reside in the Tati district.

You will be reinstated as Acting Chief at Serowe by me as High Commissioner, as soon as the necessary arrangements can be made, and you will be informed as soon as possible of the date of your reinstatement.

E. R. G. R. EVANS,
High Commissioner.

Enclosure 2 in No. 123.

MEMORANDUM.

TSHEKEDI called upon the Administrative Secretary at the High Commissioner's Office on Saturday morning, the 30th September, and inquired whether, before leaving Cape Town for Serowe, he might be granted an interview with His Excellency for the

* No. 116.

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purpose of paying his respects. He said that he might also wish to mention other matters connected with recent "developments," but seemed disinclined to say what particular points he wished to discuss.

His Excellency received Tshekedi (who was accompanied by his secretary) the same afternoon on board H.M.S. *Dorsetshire* at Simonstown. The Administrative Secretary and Captain W. T. Makeig-Jones, R.N., were present.

Tshekedi said that he desired to pay his respects to His Excellency now that he had been advised that His Majesty had been pleased to terminate his suspension. After stating that he would proceed to Serowe by the train leaving Cape Town on Monday morning, the 2nd October, he mentioned that he had been troubled by certain statements in the newspapers.

His Excellency informed the Acting Chief that the loyal message which he had desired might be submitted to the King had been transmitted to the Secretary of State with a request that it might be submitted to His Majesty. He then advised Tshekedi not to attach too much importance to what appeared in the newspapers, as their comments and criticisms were frequently based on incomplete or erroneous information. Tshekedi referred to his desire to go to England to interview the Secretary of State on the subject of the Draft Native Proclamations. His Excellency read to him the relevant portion of the Secretary of State's message (telegram No. 93 of the 26th September),* which had already been communicated to him, viz., that his representations were receiving most careful consideration, that he had had very ample opportunity for putting his views before the High Commissioner, and that the Secretary of State did not think that any useful purpose would be served by discussion with him, but that if Tshekedi thought there were any points which he had not made sufficiently clear in the representations already put forward by him he should submit to the High Commissioner, through the Resident Commissioner, at a very early date, any explanatory statement by which he desired to supplement them. Tshekedi suggested that he had not had sufficient time to consider the provisions of the Draft Proclamations at the last meeting of the Advisory Council which he had attended, but the High Commissioner pointed out that the original Drafts had been in his possession for about eight months, which seemed ample time for examination of their provisions.

Tshekedi said that he understood that he had not now permission to proceed to England to interview the Secretary of State, but nevertheless went on to suggest that he might still desire to proceed to England for the purpose of consulting his friends there, and he appeared to assume that, in that event and as he would be travelling in a private capacity and not specifically for the purpose of interviewing the Secretary of State, no special permission would be necessary. It was suggested to him that a Native Chief proceeding to England could hardly be regarded as travelling in a purely private capacity even though the object of his journey was not to seek an interview with the Secretary of State, and that if, notwithstanding the Secretary of State's message he still desired to go to England it would be appropriate for him to put forward such request in order that the Secretary of State might be informed and his concurrence obtained.

His Excellency promised that if Tshekedi put forward this request it would be submitted to the Secretary of State by telegraph. It was understood that Tshekedi would probably seek a further interview with the High Commissioner after his reinstatement, at Serowe, when the Resident Commissioner would be present.

After tea, Tshekedi and his Secretary were shown over H.M.S. *Dorsetshire*.

Cape Town,
1st October, 1933.

Enclosure 3 in No. 123.

BAMANGWATO. On the 14th September I announced to you in this place that I had made an order suspending Tshekedi Khama, your Acting Chief, from the Chieftainship of the Tribe during the pleasure of His Majesty the King.

The reasons for which I made that order are known to you. I did not make it because I thought that the man McIntosh did not deserve to be punished. On the

* No. 111.

contrary, I expelled McIntosh and another European from your Reserve. I made it because the law does not allow Europeans to be tried in Native Courts, and no man can be Chief unless he is ready to obey the law. I have now received from Tshekedi the following message :—

> " As it appears that there is a feeling that it is my desire to try case in which Europeans are involved I desire to repeat what Mr. A. C. Germond said at the recent Inquiry that I said to him on 6th September, 1933, that I wished to stress the fact that I had not taken such a step regarding P. W. McIntosh with the intention of raising the issue on a point of jurisdiction affecting my Court but I had been compelled in the interests of just administration and the good of my people to order the punishment of McIntosh. I hereby abandon any right to deal with a case in which a European is concerned and I undertake not to deal with any European case in future. In order to remove any misapprehension that might exist I did not and will not claim to be immune from the laws of the Protectorate as now in force or as may be hereafter in force. No one could regret more than I do what has occurred, and I desire to assure High Commissioner that I would at all times work in harmony and loyal co-operation with the Administration."

I cannot accept the statement in this message that the Acting Chief was compelled to act as he did in the interests of just administration and for the good of his people It can never be for the good of the people that a Chief should break the law.

Nevertheless, in view of the statement in the message which I have now received from Tshekedi that he regrets what has occurred, that he will not deal with any European case in future, that he does not claim to be immune from the laws of the Protectorate and that he will at all times work in harmony and loyal co-operation with the Administration, I have felt able with the advice of the Resident Commissioner to recommend to the Secretary of State that he should advise His Majesty the King to terminate the period of Tshekedi's suspension and thereby to reinstate him as Acting Chief of the Bamangwato.

Tshekedi Khama, the message which you have sent to me has been read to the people of your Tribe, and they have heard the promises you have made as to your future conduct. I believe that you earnestly intend to keep those promises. Because I believe this, I have felt able, at the request of the Resident Commissioner, who has always had the welfare of the Tribe at heart, to recommend to the Secretary of State that the period of your suspension should be terminated and with it the Order directing you to reside in the Tati district, and the Secretary of State has accepted that recommendation and has advised His Majesty the King accordingly.

Bamangwato, I now announce to you that His Majesty the King has been graciously pleased to direct that Tshekedi Khama shall be reinstated as Acting Chief of the Bamangwato Tribe and that the Order requiring him to reside in the Tati district shall cease to operate.

The direction which I gave on the 14th September for the election of an Acting Chief and Council is no longer operative.

Acting Chief Tshekedi Khama. You are now restored to your position as Acting Chief of the Bamangwato. In that capacity you are in the position of a Trustee for the young Chief Seretse, with all the responsibilities and duties which trusteeship entails.

You have promised that you will at all times work in harmony and loyal co-operation with the Administration. I charge you not to forget that promise.

Serowe
4th October, 1933

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20283/100.

No. 124.

DESPATCH
from
HIGH COMMISSIONER, SOUTH AFRICA

(Received 23rd October, 1933.)

(Bechuanaland Protectorate.)
(No. 719.)

High Commissioner's Office,
Cape Town, 10th October, 1933.

SIR,

WITH reference to my despatch No. 682 of the 26th September* and my telegram No. 130 of the 9th October,† I have the honour to transmit herewith a copy of a despatch from the Resident Commissioner of the Bechuanaland Protectorate submitting observations upon certain aspects of the recent occurrences at Serowe.

2. I do not think that I need add anything to the enclosed despatch, save with regard to paragraph 17 thereof. I recognize that the attitude of Tshekedi towards the Resident Commissioner and his officers has in the past left a good deal to be desired, but I feel that I must make it clear that, as stated in my telegram No. 98 of the 14th September‡ and in paragraph 16 of my despatch under reference, the reasons which made it necessary to suspend Tshekedi from the acting chieftainship instead of dealing with him by fine and rebuke were his attitude as disclosed at the public inquiry on the 13th September that he was entitled to try in his Court and punish a European, and his claim that he was immune from the law prohibiting Native Chiefs from dealing with cases in which Europeans are concerned.

I have, &c.,
E. R. G. R. EVANS,
High Commissioner

Enclosure in No. 124.

Resident Commissioner's Office,
Mafeking, 3rd October, 1933.

SIR,

I HAVE the honour to refer to Your Excellency's despatch No. 2263 of the 26th September enclosing copy of Your Excellency's despatch to the Secretary of State, No. 682 of the same date, dealing with recent events at Serowe.

2. In this connexion I shall be glad if I might be allowed to offer the following observations which would appear to have a not unimportant bearing on the action taken in regard to two aspects of this matter.

3. In my first despatch to Your Excellency reporting on the position so far as then known to me (No. 6408 of the 8th September), I suggested in paragraph 32 that some display of force would be necessary, and that such force should preferably consist of men drawn from His Majesty's Fleet.

4. This recommendation was not lightly made, but was the result of careful consideration, especially in the light of (i) recent happenings at Moshupa and the decision then reached, and (ii) the position and feeling at Serowe as known to me.

5. Your Excellency will recollect that the trouble that arose at Moshupa was not due to difficulties between the Chief of the Bangwaketsi Reserve (Bathoen) and the Administration, but between the Chief and the Headman of the Bakgatla Tribe at Moshupa; and that the intervention of the Administration took place at the—often repeated—request of the Chief, and on the decision of the High Commissioner, Sir Herbert Stanley.

6. The result of endeavouring to enforce the Government's orders without the display or use of force led, as Your Excellency is aware, to a very deplorable incident which might well have resulted in loss of life. As a result it was decided, after a Conference at Pretoria with His Excellency and telegraphic communication with the Secretary of State, to authorize the use of force by obtaining the service of men from Southern Rhodesia.

7. That it was not necessary to proceed to the length of introducing this force owing to the surrender of the tribe, does not alter the fact that it had been decided to do so, and that this action had been authorized by the Secretary of State on the recommendation of the High Commissioner.

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* No. 118. † 20283/92; not printed. ‡ No. 85.

8. I would further point out in this connexion that, when the question of the nature of the force to be used was under consideration at Pretoria, three possible courses were discussed, that is, the use of men from—

(*a*) the Fleet,
(*b*) Southern Rhodesia, or
(*c*) the Union Government.

9. It was thought that the use of men from the Fleet would be probably most effective, but possibly more costly; and on these grounds the use of men from Southern Rhodesia was recommended by the High Commissioner to the Secretary of State, though His Excellency pointed out at the same time the objection to this course in view of the attitude of the Union Government in regard to the general principle involved.

10. I had these various aspects of this question fully in mind when recommending in the present case the use of men from the Fleet in preference to either of the other courses, and it seemed to me that if a display of force had to be made at all, it would be far better to use Imperial forces, as Your Excellency was yourself in control of such forces, and consequently there was far less chance of the Union Government taking offence at the refusal of the offer of their help and the acceptance of help from Southern Rhodesia.

11. As to the necessity for the display of force at all I would desire to point out that the Moshupa incident afforded definite proof of such necessity in the case of trouble with a mere headman, the total adult male strength of whose tribe was about 1,000.

12. How much more, therefore, was it necessary in order to avoid the possibility of trouble to make a display of force at Serowe, where the question at issue was with the most powerful chief in the Protectorate; the population of Serowe alone was about 30,000; it was uncertain what action would have to be taken, it was well known that feeling was running high; the results of any trouble that occurred would have been much more serious than at Moshupa, inasmuch as at Serowe there was a comparatively large European population, whereas at Moshupa there was none; and the issue was—unlike that at Moshupa—between the Chief and the Administration.

13. The above remarks must, of course, all be read in the light of the fact that I had no Protectorate Police Force available owing to their absorption on the Foot-and-Mouth Disease cordons.

14. The other aspect of the incident to which I would desire to draw attention is that it has been treated—especially in the public Press—as an isolated case of trouble between the Administration and the Chief, and as if the decision come to thereon had been based solely and entirely on the facts of that particular instance.

15. The many years of difficulties between the Administration and Chief—commencing long before my tenure of office—have been entirely ignored, and as a result it has been made to appear as though action had been taken in regard to this particular case of a nature far more drastic than the circumstances warranted.

16. I am, of course, aware that in arriving at a verdict, a Court of Law takes no account of the previous record and character of the accused; but I am equally aware that in pronouncing sentence such previous record and character are most certainly taken into account.

17. And in the present instance that undoubtedly was the case—certainly it was so in so far as I was concerned and I imagine it must have been so in the minds of the others concerned who, with me, unanimously recommended to Your Excellency the course that was taken, that is, the Acting Assistant Resident Commissioner, the Acting High Commissioner for the United Kingdom, and the Administrative Secretary.

18. That the public Press should have treated the present incident as standing alone is perhaps hardly surprising, inasmuch as they have so far as I am aware never been informed, officially or otherwise, of the many years of difficulty with the Chief, and the many grounds on which both High Commissioners and Resident Commissioners have experienced such difficulties, nor of the circumstances attending the Moshupa incident.

19. Moreover, the Press was assiduously fed, before, during and after the inquiry (and are still being so fed) with one-sided and misleading information as regards the position at Serowe by Mr. Buchanan, the Chief's Advocate, and to a greater extent even by Mr Jennings, the representative of the London Missionary Society, a notorious opponent of the Administration: indeed, Mr. Buchanan informed me himself that a Press campaign was "their only weapon"

20. Finally, I would refer to the attitude of the London Missionary Society as represented by Mr. Jennings in this matter. Your Excellency is well aware of the

difficulties which the Administration has experienced in the past with the London Missionary Society in the Bechuanaland Protectorate. I need only refer to the case where Mr. Lewis, the London Missionary Society representative at Serowe, had to be removed from there by his Society at the instance of Lord Athlone, then High Commissioner, in January, 1929, before the time of my assumption of office. There have been many other cases which I do not propose to deal with in the present despatch.

21. I have had occasion in a number of my reports and despatches to refer to the general attitude and activities of the London Missionary Society in the Territory and I need not recapitulate these here. Briefly, they have adopted the position that they had a religious monopoly in the Territory, especially in the Ngwato and Batawana Reserves, where they have made it effective; and have opposed the entry and the operations of other missions while themselves failing to make any appreciable impression on the people in spite of the seventy years of practical monopoly in most districts.

22. The Dutch Reformed Church, represented by Mr. Reyneke at Mochudi; the Scotch Church, represented by Dr. Shepherd at Molepolole; the Seventh Day Adventists, represented by Dr. Tonge at Kanye; and the Roman Catholic Church at Khale, have all established or are establishing hospitals or qualified medical doctors or nurses to assist the natives; but the London Missionary Society alone, in all these years, have done nothing whatsoever in this direction at all—the most crying need of the native population.

23. The representatives of all the various churches I have mentioned above are among the most valued supporters of the Government; some of them are personal friends of my own who have rendered and are rendering exceedingly valuable services to the Territory. Alone, the London Missionary Society have stood out from working with the Administration, and have preferred to interfere in political and administrative questions, rather than to follow the normal paths of missionary work, as in the case of the other missions in the Territory.

24. I refer, of course, to the London Missionary Society representatives in the Bechuanaland Protectorate, and I do not wish to include amongst them the London Missionary Society Institution at Tiger Kloof, in the Union, whose Director, the Reverend A. J. Haile, is a person of entirely different character, who has been of very great help to the Administration and with whom I have always been able to work on most cordial terms.

25. So far as the London Missionary Society's policy in the Territory generally is concerned, however, I trust that it may be found possible in the interests of future peace and harmony to secure that their representatives would adopt a different line in future.

26. With the reinstatement of Tshekedi as Acting Chief of the Bamangwato I trust that the present incident is closed, and it will not have been entirely wasted if it brings about a better understanding between the Acting Chief of the Bamangwato and the Administration.

27. Certainly, so far as I am concerned I shall use my utmost efforts to secure that harmony and co-operation in working without which progress will be impossible. It is only necessary to glance at the work to be done for the inhabitants of the Territory to realise how necessary this is.

28. The Administration have just concluded a task which can, I think without exaggeration, be described as immense, namely, the inoculation of nearly 750,000 head of cattle over an area of 40,000 square miles—mostly bush country—in a period of seven months; and the maintenance for this purpose of a cordon and a five mile wide cattle free zone seven hundred miles long.

29. This has imposed a very great strain on every part of the Administration and has disorganised various branches of it, notably the police, whose ordinary duties have been largely neglected.

30. The drought, which has been the worst experienced here for 20 years, has necessitated feeding various sections of the population, and the difficulties of doing this in remote districts such as the Botletle River and the Kalahari have been, and are still, very real—involving not merely questions of transport (aggravated by foot-and-mouth disease restrictions) but the necessity of securing that the food supplies are, in fact, properly distributed, and neither wasted nor misappropriated.

31. But, having completed or put in hand the work referred to above, fresh problems have to be solved. The task before the Administration now and in the immediate future is one of magnitude and difficulty.

32. It includes the reconstruction of the Territory's industries, and the reorganization of its export trade, which have been brought to a complete standstill by the foot-and-mouth disease restrictions. This involves negotiations with the Union

Government authorities in respect of the export of hides, fur-skins, curios, butter, grain, meat and eventually cattle; and in regard to each of these questions arrangements will also have to be negotiated with producers and dealers in the Territory, both European and native.

33. I am commencing these negotiations with General Kemp at Pretoria on the 19th instant, and immediately afterwards I am arranging a conference with representatives of the Imperial Cold Storage and the principal farmers and dealers interested in cattle production and the meat export trade with a view to starting killing and chilling at Lobatsi.

34. At the same time, and closely interconnected with the above, the various developments arising out of Sir Alan Pim's Report, and, indeed, a review of the whole of this important document, have to be dealt with. And this has necessarily to be considered in connexion with the preparation of the financial estimates for the coming year which, in view of the various disasters that have fallen on the country, present problems of peculiar difficulty. Not only has the police force to be reorganized, but I contemplate other Administrative reorganization arising out of the Pim Report, and for other reasons.

35. There are other matters also which will involve a good deal of difficult work, amongst the more important of which may be mentioned the operation of the two new Native Administration Proclamations; the enactment of the Nasarwa reforms, and the position arising from the protest of the European Advisory Council and the resignation of the Chairman and two of its members owing to the terms of the Pim Report.

36. I am quite prepared to apply the energies of the Administration to these varied and troublesome problems forthwith, but in order to do so successfully it is essential that there should be peace and harmony in the Territory—this is the first object to aim at. And it is particularly difficult of attainment in present circumstances when the population—European and native—is on edge owing to long continued privation and hardship, and when the officers of the Administration are suffering from a lengthy period of strain and overwork.

37. Nevertheless, in the interests of the Territory and its people this must be the object of sustained effort by all concerned, official and others.

38. I regret that owing to pressure of work, and indisposition which has confined me to bed, I have not been able to prepare this despatch at an earlier date.

I have, &c.,
C. F. Rey,
Resident Commissioner.

His Excellency the High Commissioner,
Cape Town.

20283/101.

No. 125.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 23rd October, 1933.)

(Bechuanaland Protectorate.)
(No. 725.)
(Confidential.)

High Commissioner's Office,
Cape Town, 10th October, 1933.

Sir,

With reference to my Confidential despatch No. 683 of the 26th September* I have the honour to transmit herewith a copy of a despatch which I have received from the Resident Commissioner of the Bechuanaland Protectorate in reply to my request for his observations on the memorandum by Mr. P. Liesching regarding the alleged failure of the magistrate at Serowe to take action upon complaints lodged by Acting Chief Tshekedi as to the conduct of certain European residents at Serowe.

2. Of the three telegrams of which copies are enclosed with the Resident Commissioner's despatch, the substance of the first telegram, dated the 24th September,

* No. 119.

was communicated to you in my telegram No. 113 of the 24th September,* and in paragraph 17 of my despatch No. 682 of the 26th September†; the substance of the second telegram dated 25th September, was embodied in paragraph 17 of that despatch; and a copy of the third telegram, dated 25th September accompanied my despatch No. 685 of the 26th September.‡

3. I appreciate that if legislation on the lines of the Union Immorality Act, No. 5 of 1927, had been in force in the Bechuanaland Protectorate the two Europeans, McIntosh and McNamee, of whose conduct Tshekedi had complained, might have been prosecuted criminally, and, if convicted, punished. At the same time, I feel sure that if the complaints against McIntosh and McNamee, and the relevant correspondence, particularly Captain Nettelton's report of the 28th April, 1932 (Annexure F to Mr. Liesching's memorandum), had been brought to the notice of Sir Herbert Stanley, steps would have been taken to have them removed from the Bamangwato Reserve and excluded from all other Native Reserves under the powers vested in the High Commissioner by Section 3 of Proclamation No. 15 of 1907. As stated in the last paragraph of my above-mentioned despatch No. 682 of the 26th September it was in the exercise of the powers conferred by that Proclamation that I gave directions for McIntosh and McNamee to be ordered to leave the Bamangwato Reserve.

4. In all the circumstances I feel compelled to record the opinion that the omission of the Authorities at Mafeking to bring to the notice of the High Commissioner Captain Nettelton's Minute of the 28th April, 1932, was an error of judgment. As you are aware Colonel Rey was absent on leave in England at the time, and Captain Reilly, who was acting as Resident Commissioner in his absence, is at present on leave in England.

I have, &c.,
E. R. G. R. EVANS,
High Commissioner.

Enclosure in No. 125.

Resident Commissioner's Office,
Mafeking, 27th September, 1933.

Sir,

I have the honour to acknowledge the receipt of Your Excellency's despatch No. 2227 of the 24th September, and to state in reply that I have nothing to add to the observations contained in my telegrams No. 148 of the 24th September, No. 150 of the 25th September, and No. 154 of 25th September, copies of which are attached.

I have, &c.,
C. F. Rey,
Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

Telegram from Resident Commissioner to High Commissioner, Cape Town, dated 24th September, 1933.

148. 24th September. Reference Your Excellency's telegram 192 of 23rd September following are the replies to questions asked by Secretary of State:—

(i) Both McNamee and McIntosh were called before Magistrate and warned several times, and Police were instructed to take matter up. Police found that very little evidence could be obtained, and Chief was asked to co-operate and collect evidence in respect of alleged offences. Further, Police were instructed to give special attention to the actions of McIntosh and McNamee.

(ii) Although he was satisfied that there were grounds for complaint, the Magistrate considered it absolutely necessary for the evidence to be collected by the Chief. The Police had previously attempted to obtain evidence, but owing to nature of charges this had been unsuccessful. Women concerned would not discuss matters of this kind with Police.

(iii) T. E. Booker is a Hospital Assistant Dispenser under this Administration stationed at present at Serowe.

* No. 107. † No. 118. ‡ 20283/95: not printed.

(iv) No further complaint was made by Tshekedi in respect of acts of immorality neither was a report made of the assault which occurred early in August, and which led to the hearing of case in the Kgotla. No explanation was offered by Tshekedi prior to the sentence given in his Court.

(v) General complaint (immorality, assault and acts prejudicial to the interests of the natives living in Serowe) on which a report to the Acting Resident Commissioner dated the 28th April, 1932, was made by Magistrate. Instructions were then sent by the Acting Resident Commissioner for an inquiry to be held. Owing to the absence of Chief in connexion with mineral concession matters the required witnesses could not be obtained. Chief Tshekedi was away from about June to August, 1932. Charges were as follows:—McIntosh: (1) charged under Police Offences Act, reprimanded and discharged 1st August, 1930; (2) assault, fined 10s. or two weeks' imprisonment with hard labour, 9th December, 1931. McNamee charged under Police Offences Act, reprimanded 1st August, 1930; (3) assault, fined £2 or one week's imprisonment with hard labour, 11th November, 1930; (4) assault and malicious injury to property, sentenced one month's imprisonment with hard labour on first count, and one week's imprisonment with hard labour on second count; (5) assault, fined 10s. or 14 days' imprisonment with hard labour, 12th December, 1931; (6) theft, discharged 8th August, 1932

(vi) No.

(vii) As regards the 1930 case matter should have been brought to Resident Commissioner's notice by Assistant Resident Commissioner (Stigand) or Government Secretary (Dutton) on Resident Commissioner's return from Cape Town where he had been conferring with the High Commissioner. Both Stigand and Dutton now retired; no action possible. As regards the 1932 case no blame attaches to officers dealing with matter as Resident Commissioner was on leave in England. As regards the Booker incident in 1933 this was not reported to Mafeking for the reasons given in finding No. 5 of the Commission of Inquiry. Nevertheless, it would have been better had the incident, though closed, been brought to the personal notice of the Resident Commissioner in view of the past history of the individuals concerned.

(viii) Yes. Both.

(ix) Although there is a distinction between native reserves and other districts in regard to this matter there is comparatively little real difference as the reserves and the other districts are contiguous, intercourse between them is continuous, and there are native villages and/or native reserves under tribal chiefs in all districts except Ghanzi and Tuli Block.

With further reference to Secretary of State's questions general question of illicit relations between Europeans and natives, which is root of present trouble, was taken up by me personally in Circular minute dated 28th September, 1931, addressed to all Magistrates and Medical Officers drawing attention to evil, and instructing them to consult with Police Officers and Missionaries in their districts and respective Chiefs, and to forward to me observations at early date. Amongst the answers received was one from Tshekedi to Magistrate, under date 8th October, 1931, stating that matter was not only difficult but delicate affair to approach, that he had commented on subject but that very small percentage of many such cases came to notice of Magistrate, that he did not at present wish to go into details that situation called for some action, but of what he was not able at that stage to suggest.

In October, 1931, I informed the European Advisory Council at 15th Session that matter had been receiving my attention with a view to considering possibility of mitigating evil.

After careful consideration of replies received to Circular minute referred to above, I prepared and submitted to High Commissioner draft Proclamation dealing with matter in October, 1932.

After lengthy correspondence and consultation between High Commissioner and three Resident Commissioners at Pretoria, it was finally decided by general agreement on the suggestion of the High Commissioner owing to reasoned objections to proposed legislation in February, 1933, to postpone further consideration for the time being.

In view of above statement of action taken and proposed by Administration in regard to which Tshekedi was consulted and was unable to assist, it cannot be contended that there was failure to act on part of Administration or that Tshekedi has

legitimate ground for complaint on this score. Obviously, in existing state of law action in individual cases was limited to comparative futility of removal of individuals from one district to another, and general position was affected by general action proposed described above which was known by all Magistrates to be under consideration.

With a view to amelioration of position and prevention of recurrence of present events I am resubmitting for immediate enactment draft Proclamation submitted by me in October, 1932, and I am issuing instructions to all Magistrates that any case of actual or potential difficulty with Europeans in Native Reserves is to be reported immediately by Chief to Magistrate and by him to me personally.

TELEGRAM.

FROM C. F. REY, RESIDENT COMMISSIONER, TO HIGH COMMISSIONER, CAPE TOWN.

150. 25TH SEPTEMBER. I should be grateful if the following could be transmitted to the Secretary of State with the Report of the Inquiry held by Mr. Liesching and myself on the 13th instant which I have signed:—

Begins:—In regard to the penultimate paragraph of the report I must point out that we had not then before us the full facts and documents detailed in the latter half of my telegram No. 148 of 24th September commencing with the words "with further reference to Dominions Secretary's questions" setting out Administrative action taken by me in 1931 and 1932. In view of the circumstances disclosed in the telegram referred to, it is difficult to contend that there was substance in the Acting Chief's complaints or that remedial action of a fundamental character was not considered and proposed by the Administration.—C. F. REY, Resident Commissioner.
O.H.M.S., 9 a.m., 25th September, 1933

F. HARRIS
(for C. F. REY).

TELEGRAM FROM RESIDENT COMMISSIONER TO HIGH COMMISSIONER, DATED 25TH SEPTEMBER, 1933.

154. 25TH SEPTEMBER. Lobatsi residents are protesting against deportation to that district of McIntosh and McNamee. This illustrates importance of point I have already put forward as to futility of removal of such persons from one district to another, and grave difficulty in which Administration was placed as to nature of action to take in these cases. I should be grateful if Your Excellency would cause the above to be included in my telegram 148 of yesterday, which, I understand, was to be transmitted to Secretary of State.

(c) Visit of Sir Malcolm Watson of Ross Institute.

10299/17.

No. 126.

RESIDENT COMMISSIONER, BECHUANALAND PROTECTORATE,

to

HIGH COMMISSIONER, SOUTH AFRICA.

(Copy received in Dominions Office, 20th June, 1932.)

[*Answered by* No. 127.]

(No. 4834.) Resident Commissioner's Office,
Mafeking, 13th May, 1932.

SIR,

I HAVE the honour to transmit for Your Excellency's information a copy of a minute from the Principal Medical Officer, enclosing a report on a visit recently paid to the Southern Protectorate by Sir Malcolm Watson of the Ross Institute.

2. I feel sure Your Excellency will agree with me that the information contained in the report emanating from such an eminent malarial authority is extremely valuable, and I am addressing a letter to Sir Malcolm expressing the appreciation of this administration for his valuable advice.

3. Paragraph 14 of the report dealing with the possible danger of the introduction of Yellow Fever through the medium of aerial transport appears to be a matter for investigation, and I would ask Your Excellency that this matter may be pursued in view of any action that may be taken with regard to the Convention for Sanitary Control of Aircraft as mentioned in Your Excellency's despatch No. 919 of the 4th May, particularly as it affects Chapter 11 of the Ministry of Health's Confidential Report No. 19

4. In a report of an interview with Sir Malcolm Watson published in the Johannesburg *Star* of 12th May, he made the following remarks:—

> "I am in favour of putting an absolute embargo on the aerial transport of passengers from West Africa across the Continent to East Africa or the Union. A man may leave West Africa apparently perfectly healthy, but really incubating the disease, and on his arrival at the East Coast would spread Yellow Fever. A single case can cause a serious loss of life and upsetting of business. If an affected person were to come to Cape Town by air from West Africa you would very soon know all about it.
>
> *A Vaccine.*
>
> "Yellow Fever is very contagious until we have found a vaccine which will render people immune. I say there should be no hesitation in prohibiting aerial transport from West Africa."

This entirely bears out the views expressed by the Principal Medical Officer in paragraph 14 of his Report.

5. As Dr. Dyke has pointed out, Sir Malcolm Watson accepted the invitation on the understanding that there would be no cost to the Administration. I would, however, ask Your Excellency to authorise the expenditure of ten pounds five shillings (£10 5s.) incurred in the cost of Sir Malcolm's transport from Johannesburg to Mafeking, and the issue of a rail warrant for the return journey from Mafeking to Johannesburg. I consider that the expenditure incurred by Dr. Dyke, after consultation with the Acting Government Secretary, is reasonable, particularly in view of the recommendation made by Sir Malcolm that the Medical Department should investigate in the incidence of Malaria in different localities by the examination of children, a proposal which Dr. Dyke intends to pursue as far as is possible with the limited Medical Staff.

6. The proposed expenditure can be met from the provision under the Vote Medical.

I have, &c.,
R. REILLY,
Acting Resident Commissioner.

Enclosure in No. 126.

Government Secretary, Mafeking.

FORWARDING Enclosure (2)—a report on Sir Malcolm Watson's visit to the Southern Protectorate. I should be glad if His Honour's special attention could be drawn to paragraph 14, dealing with a possible danger of Yellow Fever.

2. When I invited Sir Malcolm to come and see our conditions I told him that this Administration was not in a position to offer him any financial remuneration, to which he replied that his visit would not cost us anything. However, in view of the exceptionally useful advice he has been able to give us I insisted on paying his fares from and to Johannesburg. The cost of travelling by aeroplane from Johannesburg to Mafeking was £10 5s., which I paid out of my pocket, and for the return fare to Johannesburg I supplied him with a Government Rail Warrant. I should be glad to have covering authority for the issue of the Rail Warrant and for a refund of the £10 5s. which I paid Sir Malcolm—receipt for which I attach. (Enclosure (1).)

3. I would further suggest that it would be a gracious token of our appreciation if a letter could go from His Honour to Sir Malcolm Watson, acknowledging the indebtedness of this Administration to him for the valuable assistance he has given us.

H. W. DYKE,
Principal Medical Officer.

Mafeking,
7th May, 1932.

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Report of a brief Malarial Survey of the Southern Protectorate by Sir Malcolm Watson, LL.D., M.D., D.P.H., of the Ross Institute, London.

FOLLOWING on personal correspondence between Sir Malcolm Watson and myself while he was in Rhodesia, he very kindly offered to pay us a flying visit of an informal nature, and to advise us (free of charge) on the Malarial position of the Southern Protectorate. At considerable inconvenience to himself, he was able to fit in three days between appointments in the Northern Transvaal and in Natal.

2. He reached Mafeking by aeroplane from Johannesburg on the morning of the 30th April, and we proceeded forthwith by motor car to Gaberones, stopping at Ootsi Village, where a few children were examined and an artificial pond immediately below the village was inspected. In this pond only culicine larvæ were observed.

3. The following morning, 1st May, a splenic survey of 64 children and babies was made at Gaberones Village, followed by examination of eleven children in the Government Camp. Only two children at Gaberones Village and one in the Government Camp showed very slight splenic enlargement. Sir Malcolm then inspected the banks of the Notwani River and certain pools of water in rocks adjoining officials' houses. The Notwani River was flowing strongly and showed evidence of recent flooding. The river is situated within 500 yards of the Government Camp and three-quarters of a mile from the Gaberones Batlokwa Village. In this valley, following the old water course, there is a succession of stagnant pools; those that were inspected were teeming with larvæ of culex mosquitoes, but not a single Anophelene Larva was seen. The rock pools did not appear to have any larvæ whatever, the probable reason being that cattle had been drinking there and the water was so polluted by animal excreta as to make it unsuitable for larval growth.

4. We then proceeded to Mochudi. On the way we stopped at Morea Village on the banks of the Metsemotlaba River, which was running strongly and the surrounding country was swampy. The village is situated within half a mile of the river and within a few yards of the railway line, along which were "borrow pits," containing water. In none of the latter were Anophelene larvæ observed, though Culicine larvæ were abundant. The spleens of 36 children were examined, without detection of a single splenic enlargement.

5. Mochudi Village was reached in the late afternoon, and a rapid visit of inspection was paid to part of the village and certain native houses. Sir Malcolm Watson expressed great interest at the good construction of these Bakgatla abodes and the artistic designs on the walls, as well as the general cleanliness and tidiness of the dwellings and the courtyards; the dwellings mostly consisted of large round huts built in stone or sun-dried bricks, thatched with grass, and the earth floors are "smeared" with a mixture of earth and cow dung which forms a very hard surface that is easily kept clean; these he considers superior to anything he has seen in native life in South Africa. Reverend Reynecke of the Dutch Reformed Church Mission kindly gave us hospitality for the night. The following morning, 2nd May, an early start was made and the spleens of 142 children of the Mochudi Primary School were examined, as well as those of six babies. Of this total only four showed very slight enlargement of the spleen. These four children stated that during January and February they had been living at cattle posts some 8 miles away from Mochudi on the banks of the Notwani River, and that they had recently been ill; therefore the splenic enlargement, presumably, was due to Malaria. We then proceeded to the Bakgatla National School, which stands on a high promontory some 200 feet above the main portion of the village and within 300 yards of the Notwani River. The river contained much water, and owing to the level nature of the ground, it follows a tortuous course and spreads out into pools and marshes. From the School an excellent view is obtained of the river for 3 or 4 miles, and Sir Malcolm was specially struck by the fact that most of the village of Mochudi is situated within a half-mile radius of the river, which, to the casual observer, would present a formidable danger of Malaria to the community. But, as will be gathered from the splenic index, this is not the case.

6. The children of the upper school (nearly all of whom are over 12 years of age), numbering 303, were paraded for a rapid inspection, which for want of time could not include examination of spleens. They were particularly clean and tidy, and their appearance was that of intelligent, healthy, happy and contented children. After Sir Malcolm had given a short address to the children we proceeded to the Chief's Kgotla, where Sir Malcolm said a few words of advice on health matters to the Tribal Chief, Molefi and his councillors. By this time it was nearly mid-day, and as Mafeking had to be reached before nightfall, any further investigations had to be discontinued.

7. One observation worthy of note was that in little rock pools scattered throughout the upper village of Mochudi there were masses of mosquito larvæ of the variety Stegomya (Aedes Argenteus)—the carrier of Yellow Fever.

8. Throughout the investigations at Gaberones, Moroa and Mochudi we were accompanied by Doctor Thompson, temporary Medical Officer at Gaberones. Many ordinary and cine-photographs were taken by Sir Malcolm of all points of interest. Throughout our whole visit to Mochudi Mr. Reynecke gave us the greatest possible help and conveyed us many miles in his own car.

9. The following summary shows the result of the splenic examinations made on native children in the various villages :—

Locality and age of Children.	*Enlarged Spleens.*	*Normal Spleens.*
Ootsi	—	5
Gaberones Village.		
Ages 5 to 12	1 (very slight)	54
Infants	1	8
Gaberones Camp.		
Ages 5 to 12	1	6
Ages 5 to 12 (European)	—	3
Moroa Village.		
Ages 1 to 12	—	36
Mochudi.		
Primary School		
Ages 5 to 12—girls ...	2	118
Ages 5 to 12—boys ...	2	24
Infants	—	6
	7	260

Spleen rate 2.7 per cent.

10. Sir Malcolm Watson has found, during his many years of investigation and observation in malarial countries, that splenic enlargement amongst children below the age of 12 is an absolute and trustworthy indication of the amount of Malaria existing in any particular area. In regions where Malaria is endemic the splenic enlargement amongst children will range from 20 per cent. to 100 per cent.; where the splenic enlargement is below 20 per cent. the area is not considered very malarious.

11. As will be observed from the above only 7 out of 260 children presented enlargement of the spleen, most of these in a very slight degree, and it is possible that some of the 7 enlarged spleens may be due to some other cause. From this Sir Malcolm Watson concludes without any doubt that at Gaberones, Moroa and Mochudi Malaria has been practically non-existent during the past two summers. This directly contradicts the idea that has existed for many years that Gaberones and Mochudi are highly endemic malarious areas. Sir Malcolm does not deny that Malaria occasionally does break out in these regions, but when it does it is more in the form of an epidemic than as a disease to be feared yearly, thus placing the Southern Protectorate practically in the same malarial position as a large part of the Northern Transvaal highveld, including districts such as Pretoria and Rustenburg. But he is very insistent that before any definite statement is made regarding other areas, it is of paramount importance that the whole Protectorate be surveyed by examination of the children's spleens so as to ascertain to what extent Malaria is found and in what locality. No doubt it will be found that in the Northern Protectorate the borders of the Limpopo River, certain portions of the Francistown District, the low-lying valleys of the Mangwato Reserve and most river borders of Ngamiland, may show considerably more endemic Malaria than the Southern Protectorate. Generally speaking, he is of opinion that those parts of the Southern Protectorate which he visited are very healthy and that Malaria does not play any serious part in reducing the vitality of the inhabitants.

12. As regards reducing epidemics that might arise in the Gaberones Camp, he suggests that the hollows in the old watercourse of the Notwani River which retain water after rains should be connected up by trenches and so drain away the water into the river, and such small collections as may remain should be dealt with efficiently and at very little expense by oiling during the mosquito season.

13. He is very insistent that it is of the utmost importance that Medical Officers in this Service obtain as soon as possible a thorough grounding in Malariology so that

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they may be in a position to make the necessary investigations and observations, and carry out generally any anti-Malarial measures that may be required.

14. *Yellow Fever.*—The finding of large numbers of Stogomya at Mochudi, which no doubt is repeated over and over again throughout the Protectorate, should be given very serious consideration in view of the possibility of communications being established by aeroplane with countries on the West Coast of Africa where Yellow Fever exists. This is particularly necessary since recently two aeroplane flights have been made from Europe via West Coast directly to South Africa; as it is not only conceivable but very possible that mosquitoes harbouring the germs of Yellow Fever may be transported in an aeropane from an affected area and be deposited at some landing place within our vicinity, and so introduce this formidable disease into this Territory—a calamity which, in view of the widespread distribution of the Stogomya, would be practically impossible to control. I venture to urge that this observation should be forwarded to the Secretary of State for serious consideration by those responsible for the selection of airway routes and aerodromes in Africa.

15. We are greatly indebted to Captain Neale, Magistrate of Gaberones, Mochudi District, who was most helpful in giving Sir Malcolm Watson hospitality and in making the necessary arrangements to expedite investigations.

Principal Medical Officer.

Mafeking,
4th May, 1932.

10299/17.

No. 127.

HIGH COMMISSIONER, SOUTH AFRICA,

to

RESIDENT COMMISSIONER, BECHUANALAND PROTECTORATE.

(Copy received in Dominions Office, 20th June, 1932.)

(No. 1019.)

SIR, High Commissioner's Office, Cape Town, 2nd June, 1932

I HAVE the honour to acknowledge the receipt of your despatch No. 4834 of the 13th May* regarding the visit recently paid to the Southern Protectorate by Sir Malcolm Watson of the Ross Institute.

2. I approve of the expenditure incurred in connexion with the visit.

3. I have read with interest the report upon the investigations which Sir Malcolm was also to undertake during his stay in the Protectorate and I am glad to learn that such evidence as he was able to collect in so short a period points to malaria being epidemic rather than endemic in Gaberones and Mochudi.

4. The question of the danger of the introduction of yellow fever by aeroplanes coming from areas infected with that disease will be discussed with the Union Health Authorities when my Office has returned to Pretoria.

I have, &c.,
H. T. STANLEY,
High Commissioner.

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* No. 126.

V. SWAZILAND.

(a) Report of Financial and Economic Mission.

20403/34.

No. 128.

SIR A. W. PIM (FINANCIAL COMMISSIONER TO SWAZILAND)

to

SIR E. J. HARDING (DOMINIONS OFFICE).

(Received 1st March, 1932.)

DEAR SIR EDWARD HARDING, Johannesburg, 5th February, 1932.

1. MY report on Swaziland* is being sent by this mail. I do not think that it contains anything the publication of which would be undesirable. It embodies a considerable proportion of Mr. Milligan's notes, partly so as to make it self-contained, and partly because the facts and figures supplied by him are a useful antidote to the vague generalizations which form a large part of the local information.

May I suggest that the Empire Cotton Growing Corporation should be specially thanked for having made his services available. His help was invaluable, and only actual experience makes one realize how much the work of the officers of the Corporation has contributed to the agricultural advance of the Territory. Mr. Milligan has only charged some £6 of his expenses to Government.

2. This letter deals with a few financial questions which it seems better not to include in the report, and a separate letter will refer to matters raising political issues which it seems desirable to bring to the notice of the Right Honourable the Secretary of State.

3. If the proposals for increasing income and reducing expenditure are accepted the deficit will be small, but this is on the present basis of a very low scale of expenditure on Public Works and Native Education, apart from the other directions in which some expansion is a necessary condition of development. Unless special measures are adopted the economies will take some time to be realized, and the unavoidable increase under pensions and gratuities is a serious difficulty. When a decision has been arrived at as to the acceptance of the proposals, so that the extent of the prospective deficit can be estimated, it would I think make for economy and better use of the money available if the ordinary grant-in-aid, apart from the Agricultural Loan Fund and grants from the Colonial Development Fund, could be fixed for two or possibly three years.

4. The development measures proposed for Europeans do not involve any considerable expenditure, that on the Creamery being the only item of importance. I have told them that they should get together and work out definite proposals, showing the local support which can be counted on and the method of working which seems best and most economical. The Creamery should be very valuable, both to Europeans and natives, but it is not possible to give any definite estimate as regards the extent to which it is likely to increase the revenue of the Territory, either directly or indirectly. As regards native development the results must be slow in realization, as they will depend so much on education—using the term in its widest sense. It is very important that a beginning should be made but nothing has been proposed involving large expenditure, the stud farm being the largest item. Under Native Education, however, a considerable increase is an urgent need, including the transfer to general revenue of some items now met from the National Fund, and a wider extension of medical work is very desirable. A few proposals connected with the Colonial Development Fund have been specially mentioned, more especially small Public Works and the Bremersdorp Water Supply.

5. I have been obliged to criticize the administration of the Agricultural Loan Fund, but its continuance on better lines is of great importance both economically and, even more, politically. If used towards real improvements, it is not only the individual who is helped, but the country gets a new asset and there are a fair number of enterprising settlers whose disappearance would be a serious loss. As regards the financing of this fund, Mr. Skevington suggested, during the discussion at the Treasury, that it might be possible to replace this Fund by some system of obtaining credit facilities from the private banks on the joint and several liability of a group of settlers. I have discussed this question with the banks, and find that no such arrangement is possible as

* Dominions No. 135 (published as Cmd. 4114).

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the banks will not under present conditions finance anything except seasonal requirements. Even the seasonal requirements of the Tobacco Corporation, though supplied by Barclay's Bank, were only obtained by using the agency of the Agricultural Loan Fund.

6. As regards the general question of obtaining funds, Mr. Leisk, of Barclay's Bank, suggested that the difficulties and cost of transferring funds from London might be avoided by raising them in South Africa.

His proposal was that a loan should be floated to cover the requirements of the Territories for two or three years. He considered that such a loan would be well received and would be supported by the banks if the terms were suitable. The rate of interest would have to be 6 per cent. A formal guarantee would not be insisted on by the banks as other arrangements, such as an exchange of correspondence, would probably be acceptable.

As all the Territories are concerned the proposal is one for consideration by the High Commissioner and I have communicated it to him.

A great many questions are involved and especially whether seasonal requirements should be included, considering the difficulty of employing those funds when not required for seasonal purposes, and if they are excluded the problem of financing both the necessary overdrafts and the interest and redemption charges on the Loan until it became self supporting.

Also Mr. Leisk stresses the point in his last letter that consideration of the proposal could only make progress when economic conditions become easier.

Yours, &c.,
A. W. PIM.

20403/35

No. 129.

SIR A. W. PIM (FINANCIAL COMMISSIONER TO SWAZILAND)

to

SIR E. J. HARDING (DOMINIONS OFFICE).

(Received 1st March, 1932.)

(Confidential.)

DEAR SIR EDWARD HARDING, Johannesburg, 5th February, 1932.

IN continuation of my letter of to-day's date,* there are certain other matters raising political issues which it is not desirable to bring into the report, but of which the Right Honourable the Secretary of State should be informed.

2. The Portuguese Vice-Consul came to see me at the instance of his Administration to press for the taking up of the plan for the extension of the Portuguese railway line from Goba to Bremersdorp in the middle of the Territory. This latter suggestion was put forward confidentially by a group of farmers as a means for getting an exit for their produce direct to Lourenço Marques.

3. The Portuguese proposal was that the British Government should construct the section of the line in their territory and that the Portuguese could operate it with their existing rolling stock. The distribution of the losses, or profits, would be a matter for discussion.

Such a line would be advantageous to the Territory, but it could never pay, and the scheme is an impossible one so long as Swaziland is economically so dependent on the Union for its markets. It would be greatly resented by a Union Government of any complexion.

In all discussions with people in Swaziland—whether Europeans or natives— it is obvious that at the back of their minds there is always the idea of incorporation in the Union as a possibility. The European movement of a few years ago on this subject was supported by a considerable majority in the Southern half of the Territory, though in the Northern half all but an insignificant minority were against it.

The Dutch elements of the population are a large majority in the South and their support of the movement was natural. So far as the British settlers were concerned,

* No. 128.

their support was not from any special wish to be in the Union but because at that time they saw no propects of assistance from home towards the development of the Territory and hoped that the Union would do more. The conditions are now different and there appears to be no move in this direction on the part of any section of the white population, while it does not seem likely that the Union could make any offer which would be specially attractive; they certainly would not give a railway. The movement might, however, revive if the British Government is unable to continue its assistance, or if the settlers found themselves at too great an economic disadvantage or taxed much more heavily than in the Union.

The leader of the previous agitation is trying to get up a movement against the proposed land tax, but so far has had little support in the Territory, though the sheep farmers and other large landowners resident in the Transvaal may probably join him, and may try to bring pressure on the Union Government to retaliate in some way. Meetings of farmers and others in the Northern half of the Territory and in one area of the South have shown an excellent spirit of willingness to bear their part of the burden provided other classes, such as officials and traders, contribute their share. The tax is very light and affects all equally, so there can be no grounds for allegations that it is directed against Union interests.

So far as the natives are concerned, their attitude to incorporation is shown by the following extract from the letter of farewell written to me by the Paramount Chief :—

> " Remember always, Sir, that we Swazis do not wish ever to be incorporated into the Union of South Africa. We desire to remain under the protection of His Majesty's Government. We hope and pray that His Majesty the King may keep his watchful eye over us "

They have practical experience of the Union, as a large proportion of the Swazis—the Paramount Chief says more than half—live outside the Territory in the Barberton and other Districts of the Transvaal.

4. Apart from the possibility of incorporation, the European residents, and the same would apply to natives if they realized the position, are always in fear of the Union Government finding, or inventing, some pretext, usually on the basis of veterinary restrictions, for hampering their trade, more especially in cattle. The farmers of the Union are always exerting pressure in that direction but the only recent manifestation of the tendency has been the blocking of a proposal for establishing a motor-transport service for taking Swaziland cattle to railhead. The possibility is, however, always there, and it is responsible for the request put forward on many occasions that in any discussion of preferences or of other economic arrangements with the Union, His Majesty's Government should make stipulations safeguarding the position of the Territories and securing equal treatment for their products with those of the Union. The Ottawa Conference was more especially mentioned in this connexion.

5. As regards the natives, it is not necessary to add much to what is in the Report. They are beginning to realize that very little has been done for them up to the present, and their minds are in an unsettled condition, partly as the result of economic difficulties

It is very important that they should get evidence such as they can appreciate that a real interest is taken in their welfare, otherwise there are strong influences which may turn them in very undesirable directions.

Also, it is urgent that measures should be taken to increase their resources in the Territory because the report of the Union Economic Commission on Native Affairs, which will be shortly issued, may affect their position to a considerable degree It is likely to lay stress on the extent to which the resources of native labour available in the Union are wasted and the effect of labour from the Territories in keeping down the rates of native wages. While it would probably be a considerable time before any action would be taken on the Report, even if its views are accepted, the result may be a diminution of the openings for employing natives from the Territories. This would be a very serious matter for Swaziland unless their home resources are increased.

Yours, &c.,
A. W. PIM.

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11361/3.

No. 130.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 17th May, 1932.)

(Swaziland.)
(No. 270.)
(Confidential.)

SIR, High Commissioner's Office, Cape Town, 29th April, 1932.

WITH reference to my despatch No. 214, of the 8th April*, I have the honour to submit, for your consideration, the following observations upon the proposal of the Resident Commissioner of Swaziland for the imposition of a tax on land in that Territory and the abolition of the existing rentals on certain land concessions and land.

2. This proposal is discussed by Sir Alan Pim in sections 47 and 48 of his Report†. He recommends that the tax should be imposed at the rate proposed by the Resident Commissioner, viz., at a flat rate of one penny per morgen on all land not the property of the Crown or included in the Native Areas as demarcated in 1909. He considers that there are strong reasons in favour of substituting this tax for income tax on incomes derived from agriculture, but he does not think that there are sufficient reasons for the proposed abolition of existing rentals on land.

3. Since Sir Alan Pim's Report was written the proposal has been considered at a meeting of the European Advisory Council, when a resolution in favour of the imposition of the tax was rejected by one vote, the opposition being led by Mr. I. H. Pierce, who has throughout strenuously opposed this form of taxation. A copy of the Minutes of the meeting of the Council was forwarded to you under cover of my despatch No. 213 of the 8th April.‡ In commenting upon the discussion in the Council, the Resident Commissioner has pointed out that two of the dissentient members had expressed their approval of the tax in principle, and he attributes their adverse vote to the circumstance that a definite date for the imposition of the tax was inserted in the resolution.

4. I have recently had an opportunity of discussing the proposal with Mr. Dickson personally. I agree with him and Sir Alan Pim that it would be reasonable to impose such a tax, on the basis suggested, as a means of increasing the revenue of the Territory. I am prepared also to accept the view that, if the proposed tax should be imposed, incomes derived from farming operations should no longer be subjected to income tax There is an apparent difference of opinion between the Resident Commissioner and Sir Alan Pim upon the question whether the imposition of a land tax should be accompanied by the abolition of existing rentals on land. Such abolition forms an integral part of Mr. Dickson's scheme as placed before the European Advisory Council, but as stated above Sir Alan is of opinion that there are not sufficient reasons for the abolition of existing rentals. It seems to me that there is a good argument in support of Sir Alan's view, inasmuch as in respect of many of the concessions on which the Europeans' title to land was based, the payment of the rental was the chief and in some instances the only consideration given for the rights to the land. On the other hand, there can be little doubt that insistence upon retention of existing rentals would strengthen the opposition to the tax, and a number of land-owners who would probably accept the tax without serious protest if it were to be imposed in substitution for the existing rentals would strongly demur to having to pay both rentals and tax. In these circumstances, and as the tax would produce approximately £4,500, whereas the rentals amount to little more than £500, I think that if the tax is to be imposed, the Resident Commissioner's proposal for the abolition of existing rentals would have to be adopted.

5. I feel some difficulty in accepting the proposal that the land acquired by the Swazi Nation by purchase from Europeans subsequent to the demarcation of the Native Areas under the Partition Proclamation No. 28 of 1907 should be subjected to the proposed tax. The land in question is not the personal property of the Paramount Chief nor is it occupied by any natives under a system of individual tenure. It cannot be alienated without the approval of the High Commissioner, and, in effect, although not included in the Schedule to the Native Areas Proclamation No. 10 of 1917, the land is for all practical purposes just as much Native Area as if it were so included.

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* 11361/2: not printed. † Dominions No. 135 (published as Cmd. 4114).
‡ 10433/16: not printed.

The area involved is 32,443 morgen in extent, and the tax, if imposed thereon, would amount to about £135 per annum. I do not feel that the Chief could reasonably be expected to pay this sum out of his subsidy, or from monies which the tribe receives from the Administration by way of interest in respect of the Private Revenue Trust; nor do I think that it would be a proper charge upon the Swazi National Fund. The rate of native tax in Swaziland is higher than in the Union or in the other two High Commission Territories, and I should be reluctant to agree to any special levy being imposed for the purpose of paying a land tax to the Government. It is not contemplated, as in the case of the European farming community, that there should be any remission of direct taxation imposed on the natives who are in occupation of the land in question, and I think that in all the circumstances, and having regard to the fact that the partition of the Territory was forced upon the Swazis against their wishes, it would be fair and reasonable, in the event of the tax being imposed, that the land already acquired by the Nation for tribal occupation should be exempt. On the other hand, if the Chief and tribe should at any future date acquire other land in respect of which land tax had become payable, I consider that it would not be unreasonable to require that the tax should continue to be paid in respect of such land. In other words, once the tax has been imposed on any land it should not cease to be payable in the event of the land being acquired by the Nation for tribal occupation.

6. In the course of discussion in the Council of the provisions of the Draft Proclamation, it was suggested (see pages 121-123 of the Minutes) that a paragraph should be inserted in the preamble of the Proclamation to the effect that the rentals or taxes proposed to be imposed were being finally fixed and adjusted: in other words, that the Government should to that extent bind itself not to increase the rate of tax. In putting forward this suggestion Mr. Millin admitted that no Government could bind itself. Mr. Miller also said that, as Mr. Millin had pointed out, most Governments "hesitate at committing themselves to periods during which taxes or rentals or other things may be imposed," but he added at the conclusion of his remarks on this point that he felt that the Council might "reasonably ask the Government to consider, when this Proclamation comes to be issued, some indication that this is a permanent and not likely to be an amended levy on the land-owners of the Territory." I should hesitate to recommend the insertion in the preamble of the Draft Proclamation of words which would amount to a promise that in no circumstances would an alteration in the rate of the tax be proposed by the Government. As both Mr. Millin and Mr. Miller have recognized, it would be unusual for any Government to bind itself in such a matter, and I think that the Administration could not do more than give the Council an assurance that no increase in the rate of tax would be proposed unless and until the members of the Council had been advised and had been afforded adequate opportunity of consulting their constituents and of expressing their views.

7. As already stated in paragraph 4 of this despatch, I agree with the Resident Commissioner and Sir Alan Pim that the imposition of the proposed tax for the purpose of increasing the revenue of the Territory is justified, and although the resolution in favour of its adoption was rejected by the Advisory Council by a majority of one, I am prepared, subject to the foregoing observations, to recommend its imposition with effect from the 1st January, 1933. But I must ask that my recommendation may be regarded as qualified by a reservation in respect of the eventual attitude of His Majesty's Government in the United Kingdom towards certain political difficulties which may be involved.

8. A number of owners of land in Swaziland are resident in the Union of South Africa, and include sheep farmers in the eastern districts of the Transvaal who use their land in Swaziland for winter grazing. I think it probable that they will not only protest very strongly against the imposition of the tax, but that they will also put pressure upon members of the Union Parliament, including General Kemp, the Minister of Agriculture, with a view to persuading the Prime Minister of the Union to take action on their behalf. I may mention that when the suggestion for the imposition of a land tax in Swaziland was talked about early last year, Colonel W. R. Collins, D.T.D., D.S.O., M.P. (Ermelo), who is a supporter of General Smuts and a leading member of the South African Party, called upon the Imperial Secretary and stated his intention to ask General Hertzog in the House of Assembly whether he would approach the Imperial Authorities with a view to protecting the interests of the farmers in the Eastern Transvaal who own property in Swaziland. Captain Clifford suggested to him that such action was hardly necessary, and explained that if the tax were introduced at all, the Swaziland Advisory Council would be most fully consulted before proposals were formulated. It is not unlikely, therefore, that the imposition of such a tax would be followed, not only by protests from Transvaal farmers, but in all probability by representations—though these

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might be of an unofficial character—from members of the Union Government. It is conceivable also that the question of the incorporation of Swaziland in the Union might again be revived. It will be remembered that Mr. Pierce, to whose influence among Dutch farmers of the poorer and uneducated class in Southern Swaziland much of the opposition to the proposed tax is due, was a leader in the agitation for the entry of the Territory into the Union nearly two years ago, when restrictions were placed upon the importation into the Union of Swaziland tobacco.

9. It seems necessary, therefore, that before coming to a decision with regard to the proposed tax, His Majesty's Government in the United Kingdom should take into consideration the possible political consequences. Up to the present the proposal has been regarded as one emanating from the Resident Commissioner and not from His Majesty's Government or myself. A decision to abandon it would not at this stage have any particular significance. If, however, the proposal should receive your approval and a Proclamation imposing the tax be issued, I would urge that, in fairness to those members of the Advisory Council and those settlers in Swaziland who, in their desire to assist the Administration and the Imperial Treasury, have supported the proposal to impose the tax, we could not without serious loss of dignity and prestige, both in the Union and the Territories, subsequently abandon it or agree to its suspension, either because it was contrary to the wishes of some of the inhabitants of the Transvaal or in order to propitiate the Union Government. It will be remembered that in deference to representations by the then Union Prime Minister, the Sheep Tax Proclamation, No. 29 of 1917, was suspended within a few months of its promulgation by Proclamation No. 9 of 1918, and that Proclamation No. 19 of 1910, providing for the removal of the Deeds Office from Pretoria to Mbabane, which was issued in April of that year, was amended in July (before it took effect) by Proclamation No. 38 of 1910, which postponed the date of operation *sine die*, and that it has remained ineffective ever since. I can only recommend the issue of the Land Tax Proclamation on the assumption that I might feel assured of your support in resisting any subsequent pressure from the Union for its suspension or repeal, even though such resistance might be expected to entail the probability of a demand for the transfer of the Territory to the Union.

I have, &c.,
H. J. STANLEY,
High Commissioner

11361/4.

No. 131

TELEGRAM

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 6.31 p.m., 25th May, 1932.)

25TH MAY. No. 48. Confidential. My despatch of 29th April, No. 270 Confidential.* Swaziland Land Tax. At request of General Smuts I saw, to-day, Collins, Member of Parliament, and Senator Whytock. Collins represented that sheep farmers in Eastern Transvaal are much perturbed at proposal to levy tax of 1d. per morgen, which apart from their general dislike of taxation they consider unduly onerous in comparison with quit rents charged in Transvaal. Whytock raised objection on behalf of owners of Ranches Limited, who would have to pay £200 per annum. To this they demurred on general grounds and particularly in view of circumstances that they were working at a loss and had recently been obliged to write off half their capital. I pointed out that Government was urgently in need of revenue, and I made no promise to reconsider rate of tax or to abstain from imposing it, but said that whole question of tax was still undecided.

I report this as indicative of probability that imposition of tax would give rise to outcry from Union. You will appreciate that any land tax would be unpopular at any time and more especially during present depression and but for unhappy state of Swaziland finances I should certainly have been inclined to advise that proposal should stand over until times have improved.—STANLEY.

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* No. 130.

11361/4.

No. 132.

SIR E. J. HARDING (Dominions Office)

to

SIR H. STANLEY (High Commissioner, South Africa).

My dear Stanley, Downing Street, 22nd June, 1932.

I am writing semi-officially in the first instance in reply to your Confidential despatch of 29th April* regarding the proposed Land Tax in Swaziland.

We have discussed this proposal fully with Pim and with the Treasury in the light of your despatch and of your subsequent telegram of 25th May.† I enclose a copy of a memorandum which formed the basis of the discussion. The conclusion we have arrived at is, generally, that contained in the summary of the position at the end of this memorandum. It appears very desirable that the proposed imposition of the tax should, if possible, be proceeded with, and it would seem that the difficulties in the way of effecting this successfully turn not so much on the probable attitude of the Swaziland settlers as on that of the non-resident land-owners and of the Union Government. We think, therefore, that the best course would be that, as soon as the published version of Pim's Report (which contains a clear statement of the necessity of the tax in the interests of Swaziland finances) is available in South Africa, you should approach the Union authorities unofficially, explain to them confidentially what is proposed, with a statement of the "case" for it, and if you can, ascertain what view they would take, so far as the interests of Union citizens are affected in the matter. (If there are any useful Union precedents, you would no doubt mention them.) The next step could be considered in the light of Union Ministers' "reactions" to this approach by you.

If, as I hope, you agree with this view, will you be so good as to approach the Union Government accordingly in the matter and let me know what the result is?

As regards the questions of detail which you raise in your despatch of 29th April, we are disposed, after discussion with Pim and the Treasury, to take the following views:—

On the question of the abolition of existing land rentals, it would perhaps be well that you should satisfy yourself that any concession on land rentals would not commit the Government in principle to a similar concession on mineral concession rentals, which at present produce £2,000 per annum. Subject to this, we feel that, though there is perhaps no very clear connexion between land rentals and land tax, no objection need be raised to the proposed abolition of the former (in addition to the proposed abandonment of income tax on agricultural incomes), if, as you state, these concessions would to a great extent remove the objections of the local settlers to the proposed tax and facilitate its acceptance by them.

As regards the application of the Land Tax to native areas, we feel that, having regard to the past history of the native land question in Swaziland and to the communal system under which the natives live, which, as you point out, raises difficulties as to the incidence of the tax among the natives *inter se*, there might be a case, on broad grounds of equity, for exempting native lands altogether from the tax. Short of such complete exemption, it is not, perhaps, very logical to exempt the lands acquired by the natives between the date of the partition and the present date, and to tax only such land in tribal occupation as might be acquired after the date of the enactment of the Land Tax. But we appreciate that, as a matter of practical convenience and from the point of view of obtaining a compromise arrangement which would secure easier acceptance generally, there are advantages in this latter course, and we are disposed to agree with it. It has been pointed out in this connexion that, since it is stated in Pim's Report that the existing native lands will soon be inadequate for the requirements of the natives, it might well be that a decision to exempt land hereafter acquired for tribal occupation might have some effect on the yield of the tax as time goes on.

Yours, &c.,
E. J. HARDING.

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* No. 130. † No. 131.

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Enclosure in No. 132.

Land Tax in Swaziland.

Sir A. Pim's principal proposal for reducing the existing gap between current revenue and expenditure in Swaziland is a land tax at a flat rate of 1d. a morgen on all non-Government and non-native land, estimated to produce about £4,500.

The High Commissioner has reported that a resolution in favour of such a tax has been defeated by one vote at a meeting of the European Advisory Council, an elective body representing the local settlers, which had previously passed a resolution approving a land tax in principle. He has further reported that he has received representations from or on behalf of important non-resident interests in the Union protesting against the proposed land tax, which in the case of one Company is stated to involve a liability of £200 per annum, in respect of an estate on which they are making no profits.

The High Commissioner is of opinion that local objections to a land tax would to a great extent be met if, in addition to abolishing the existing income tax on agricultural incomes, as recommended by Sir A. Pim, the rentals at present payable to the Government on land in European ownership were abolished. The cost of this concession would be about £500 per annum. Sir A. Pim saw no sufficient reason for abolishing rentals, but the High Commissioner now recommends it on political grounds in the event of its being decided to proceed with the proposed land tax.

As regards non-resident opposition, the High Commissioner cites the case of a tax of 1918 on sheep imported into Swaziland which had to be abandoned as a result of the pressure brought to bear on the Union Government by farming interests in the Transvaal and points out that there is a possibility that the proposed land tax may give rise to a similar situation or might even lead the Union Government to press for the incorporation of Swaziland in the Union.

The position might perhaps be briefly summarized as follows:—

(*a*) The proposed tax is, in the circumstances of Swaziland, a fair method of raising much needed revenue; its imposition is moreover essential if an approximate balance of annual revenue and expenditure is, under present conditions, to be achieved.

(*b*) A certain amount of opposition from the local settlers may be anticipated, but the settlers are not likely to be unanimous in opposing it, and objections from this quarter would probably be much weakened if it is accompanied not only by the abandonment of income tax on agricultural incomes (recommended by Sir A. Pim), but also the abolition of the existing rentals (as recommended by Sir H. Stanley).

(*c*) Opposition by absentee land-holders residing in the Union is likely to be keen, and may lead to pressure by the Union Government in the matter. If such pressure were sufficiently strong to necessitate the abandonment of the tax, it would, evidently, be useless to impose it, and if, further, it led to the Union Government raising the question of the incorporation of Swaziland in the Union, a very embarrassing position would be created. But it might be feasible to ask the High Commissioner to raise the matter informally with the Union Government beforehand, to represent to them the urgent need of the tax by the Swaziland Government for financial reasons, and to endeavour to secure their prior acquiescence in its imposition, so far as the interests of Union citizens are concerned in the matter.

(b) Visits of High Commissioner.

No. 133.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 2nd August, 1932.)

(Swaziland.)
(No. 405.)
(Confidential.)

High Commissioner's Office,
Pretoria, 13th July, 1932.

SIR,

I HAVE the honour to submit a report on my recent visit to Swaziland.

2. Accompanied by Lady Stanley and attended by my Aide-de-Camp, Captain L. Holbech, D.S.O., M.C., I left Pretoria by motor car on Saturday afternoon, the 18th June, and arrived at Mbabane on the next day, in time to attend the evening service at the English Church. The Resident Commissioner, Mr. T. Ainsworth Dickson, C.M.G., M.C., the Deputy Resident Commissioner and Government Secretary, Mr. B. Nicholson, C.M.G., C.B.E., D.S.O., M.C., and Captain E. D. Fenn, of the Swaziland Police, met us on the road a few miles from the capital, and on the outskirts of the township we were greeted with cheers by the European school children, and by large gatherings of the local residents, European and native.

3. Throughout the whole of our tour, wherever we went, we received the most cordial of welcomes from the Europeans, official and unofficial, English-speaking and Afrikaner, and from the natives. In Swaziland, as in the other two Territories committed to my charge, the severance of the office of High Commissioner from that of the Governor-General appears to have given unqualified satisfaction to all sections of the community, and this feeling, no doubt, contributed in no small measure to the warmth of friendliness which was manifested towards us. I was particularly gratified to note the goodwill and loyalty shown and expressed by the Afrikaner farmers in Southern Swaziland. Very few of them could speak or understand English. My conversations with them had to be conducted in such Afrikaans as I could muster, and the speeches had to be interpreted; but men, women, and children turned out in large numbers, cheered lustily, sang the National Anthem with every mark of respect, and flew no flags other than the Union Jack. Wherever possible, mounted commandos met and escorted us, and on no occasion was there the slightest indication of dissatisfaction with the present form of government or of any grievance on linguistic or racial grounds. If political or racial disharmony, such as is only too apparent in the Union, exists at all in Swaziland, it was kept completely out of my sight and hearing.

4. I was careful in all my utterances to avoid any direct or indirect reference to the question of incorporation in the Union, and, with the sole exception of Mr. Pierce, who has consistently been a protagonist in the cause of incorporation, no one said or suggested to me that incorporation was desired. Mr. Pierce told me, in private and confidential conversation, that most of the Afrikaner community, who outnumber appreciably the English-speaking residents, were in favour of incorporation, though they did not regard it as within the purview of immediate practical politics. He may be right, but there was no perceptible evidence of such aspirations, and on the other side it was made abundantly clear that not only were the natives very emphatically averse from transfer to the Union, but that certainly the bulk of the English-speaking Europeans and not a few of the Afrikaners were far from regarding entry into the Union as a desideratum. Indeed, the only explicit grumbling which came to my ears was directed against the unfriendly attitude of the Union Government as shown in the imposition of restrictions on the free access of Swaziland cattle to the Johannesburg market. As in the Bechuanaland Protectorate, so also in Swaziland, this restrictive fiscal policy would seem to have estranged the sympathies of many who might otherwise have been presumed to look upon incorporation as a step towards wider openings in political and economic evolution.

5. The relations between Europeans and natives generally, if they were correctly reflected in what I could see and hear, appeared to be eminently satisfactory. It was particularly pleasing to find the European farmers of the Bremersdorp area taking a lively and helpful interest in the development of native agriculture and animal

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husbandry. They were unable, through stress of circumstances, to hold an Agricultural Show themselves, but they made their Show ground available for a native Agricultural Show, assisted in its organization, and seemed to take pride in the excellence of some of the exhibits. This kindly feeling was obviously appreciated and reciprocated by the native exhibitors and spectators.

6. Swaziland has felt, and is feeling, the effects of the economic depression; but its inhabitants are bearing their trials with truly refreshing courage and cheerfulness. I recognize, of course, that I saw them at their best and in a rose-coloured atmosphere of hospitality and good-will. But after making full allowance for any abnormal and transient conditions, I should be doing the people less than justice if I failed to credit them with a spirit of self-reliance and hopefulness such as I have not seen equalled anywhere else in South Africa during the last twelve months. They were fortunate in having late rains which relieved farmers and cattle-owners from their most urgent anxieties, and this auspicious circumstance must have reacted on their mentality. Nevertheless, stout hearts are needed to face the future with the fortitude and the determination to "win through" of which there was abundant and unmistakable evidence. I could not but feel that here were people deserving of any help which could be afforded and ready to make good use of it. I have never before, in all my experience of such occasions, received addresses and listened to speeches so universally reticent of complaints or demands. They were not unconscious of the weight of the economic depression which lies upon Swaziland, very little, if at all, less heavily than upon the rest of South Africa; nor were they unaware of many clamant needs for public expenditure; but they seemed to appreciate that nothing was to be gained by lamentation, and that this was not the time for the advancement of claims on the British taxpayer. Substantially only two requests were made to me, that I would use any influence which I could exercise to secure some mitigation of the rigour of the restrictions imposed by the Union on their exports and to explore any possible openings in other markets, and that I would represent in the proper quarter the urgent necessity of an adequate water supply for Bremersdorp. There is no doubt in my mind that the water now available to that, the largest township in the Territory, is both insufficient in amount and so unsatisfactory in quality as to constitute a real menace to the health of the inhabitants. Bilharzia is actually a common complaint there, and enteric fever and dysentery must be ever-present dangers. I would plead most earnestly that the relevant application to the Colonial Development Fund may be entertained favourably with the least possible delay.

7. I was glad to observe the hold which Mr. Dickson, the Resident Commissioner, has secured on the confidence and regard of the people. He seemed to me to have overcome most successfully the difficulties which beset his path at the beginning of his term of office. There are still, among those to whom his appointment was unwelcome on grounds not personal to himself and among others who resent his advocacy of a land tax, a few individuals who regard him with a coldly critical eye; but, so far as I could judge, they would appear to be in a negligible minority. He is doing good work, and if he were not cramped by shortage of funds, I am convinced that under his administration the Territory would make notable progress. I should be sorry to lose his services, but I consider him to be an officer whose hopes of promotion should not be overlooked.

8. Some ten or eleven years had elapsed since my last visit to the Territory, when I went there in attendance on His Royal Highness Prince Arthur of Connaught. In the interval there have been many changes for the better. The improvement in the roads, and the establishment of the motor-omnibus service by the South African Railways, which has been made possible by that improvement, are perhaps the most striking features of advance. The new hospital at Mbabane is a very creditable institution. When funds permit, the provision of some additional accommodation, and particularly the erection of a Nurses' Home, should be considered. The Government Hospital at Hlatikulu is a great boon to the surrounding district. It also is in need of enlargement. The Mission Hospitals which I inspected, notably that of the Wesleyan Mission at Mahamba, are doing valuable work and should receive all possible encouragement. Generally, I was very favourably impressed by the Missionary enterprise of the several denominations which have established themselves in the Territory. St. Mark's School for European boys and girls at Mbabane has grown in size and has erected some good new buildings and hopes to erect more. This is an institution invaluable to the English-speaking European community, and its fame has spread far beyond the boundaries of the Territory. It is well worthy of official sympathy and support. The Native National School at Matapa is still in its early stages of structural development. It is planned on interesting lines and shows promise of

becoming a model establishment, of great benefit to the Swazi people, and perhaps an example to educationists in other parts of South Africa. I shall watch its progress with great interest.

9. I will not weary you with a detailed account of my movements. I had a very full programme, and should not have been able to complete it in the time at my disposal, but for the efficiency with which all the arrangements had been organized by the Resident Commissioner and the other officers of the Administration. The attached extracts* from the *Swaziland Times* contain reports of the principal meetings and speeches. My own speeches were delivered extempore, and I had no opportunity of revising the reports. They record the general sense of what I said with sufficient accuracy, but must not be read as correct reproductions of my remarks in detail. The only speech to which I would invite special attention was that delivered by Mr. Maritz at the public luncheon at Goedgegun. It was a remarkable tribute to the Administration, and a gratifying assurance of loyalty, coming as it did from a scion of the voortrekker family from whom Pietermaritzburg, the capital of Natal, takes its name, and it was loudly applauded by an almost exclusively Afrikaans-speaking audience.

10. I enclose copies† of the written Addresses which were presented to me, and I have the honour to request that you will be so good as to submit to His Majesty the expressions of loyalty which I undertook to convey from the Advisory Council (on behalf of the European residents of the Territory), from the Paramount Chief (on behalf of himself, the Ndhlovukazi, the Council, the Chiefs and the people of the Swazi nation), from the people of the Mtambama Valley (Afrikaans-speaking European farmers), from the European residents of Southern Swaziland (English and Afrikaans-speaking—in the Address presented at Hlatikulu), from the European residents at Goedgegun (almost exclusively Afrikaans-speaking) and from the Mahamba Mission (Wesleyan—in an oral Address).

11. I left the Territory, from Hlatikulu, on Sunday morning, the 26th June, and returned to Pretoria by motor car, arriving on the following morning.

I have, &c.,
H. J. STANLEY,
High Commissioner.

20741/20

No. 134.

DESPATCH

from

HIGH COMMISSIONER, SOUTH AFRICA.

(Received 14th August, 1933.)

(Swaziland.)
(No. 549.)
(Confidential.)

SIR, High Commissioner's Office, Cape Town, 27th July, 1933.

As you will be aware, I have recently paid a brief visit to Swaziland. After spending in Durban a few days devoted almost entirely to the fulfilment of various public and semi-public engagements, I left, accompanied by Lady Stanley and my Private Secretary, Captain L. Holbech, D.S.O., M.C., by motor car for Bremersdorp early on Wednesday morning, the 5th July, and travelled through Zululand, via Eshowe and Nongoma, where we stayed the night. On the following day, the 6th July, we proceeded to Gollel, crossing the Pongola River by a new road bridge which has been erected by the Union Government in connexion with their Pongola irrigation scheme, and from Gollel, the terminus of the branch railway line which taps Swaziland traffic, we went on to Bremersdorp, arriving there in the late afternoon. The road in Swaziland was in reasonably good condition. Within Zululand, the road was rough and sandy in parts, but generally quite negotiable. It passes through some very beautiful scenery, especially between Eshowe and Melmoth, and it traverses the old battlefield of Ulundi. Much of the country is Native Reserve, and is sparsely populated in the neighbourhood of the road. Some of the river valleys are badly infested with fly and are said to be very malarial. The whole landscape disclosed evidence of the severity

* Not printed here.

† Not printed.

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of this year's drought and looked more than usually arid. There was water in most of the numerous rivers, but their flow was below the normal level, and even the Tugela had the appearance of a series of pools. At Nongoma I had some private conversation with the local Magistrate, an officer experienced in native administration. He mentioned the current rumours of the impending transfer of Swaziland and the other High Commission Territories to the Union, and expressed the hope that the Swazis, at any rate, would be allowed to remain under the Government of the United Kingdom, and thus be spared the pin-pricks (as he called them) to which natives in the Union are subjected. This observation of his should, of course, be treated as confidential. For what it may be worth, it is indicative of the reason why many of those Europeans in the Union whose attitude towards the native question may, for want of a better term, be described as liberal cherish a sincere, though usually unavowed, hope that any request for the early transfer of the Territories will be rejected by His Majesty's Government in the United Kingdom.

2. The Resident Commissioner of Swaziland, Mr. Ainsworth Dickson, C.M.G., M.C., the Assistant Commissioner at Hlatikulu, Mr. McCarter, and the Inspector of Police, Captain Fenn, met me at Gollel and escorted me to Bremersdorp. Swaziland has suffered from the drought in a less degree than most of the Union, but nevertheless very considerably. The veld, which in ordinary years is relatively green even in the winter months, looked parched, but the cattle appeared to have maintained some semblance of good condition, and generally there was not the scene of utter desolation which at present is noticeable in large areas of the Orange Free State and some of the northern portions of the Cape Province.

3. On Friday morning, the 7th July, I opened the European and Native sections of the Agricultural Show. It was the 21st Show held by the Agricultural Association, and on both sides it was a very creditable effort, particularly creditable under the prevailing conditions of depression and anxiety. There was a large attendance, both of Europeans and of natives, and nothing could have been more friendly than the welcome which I received. The cattle exhibits were the outstanding feature of the Show. The pure bred and grade Herefords shown by one of the settlers would, I think, have won prizes at any Show in South Africa. It would be difficult, after seeing that exhibit, to subscribe to the doctrine propounded in some quarters that the Hereford is a breed not really suitable to Swaziland. Some of the European exhibits of slaughter oxen were also highly commendable. On the native side as well, the average quality of the cattle shown was very satisfactory. The Paramount Chief won the prizes for the best bull and for the best cow among the native exhibits, and another Chief showed two slaughter oxen so good that the judge, a recognized expert and a member of a firm of cattle dealers and brokers on the Witwatersrand, estimated their selling value on the Johannesburg market at not less than £10 each. He told me that he would be happy to buy forthwith a thousand head of such oxen if they were obtainable. There were some excellent exhibits of grain on both sides of the Show. The millet shown by one native was described to me by the judge as better of its kind than even the best of the same grain shown by Europeans. The citrus fruit, on the whole, was not up to the standard which would be successful at Shows in the Union. The exhibits of cotton and tobacco were few in number. The best of them were of good quality. The exhibits in the Home Industries section were numerous and reflected credit on the farmers' wives. Some of the industrial work, especially in furniture, on the native side was well in advance of anything that I saw at the native show last year. There were no sheep, and only one pig, a golden Tamworth of good quality. The exhibits of poultry were not very noteworthy. In the afternoon of the 7th July, there were native sports and races on the Show Ground. These were much enjoyed by the competitors and the spectators, and it was pleasant to observe the interest taken in them, and the help afforded in their organization and conduct, by Europeans of the official and unofficial communities. The European sports and races took place on the following day. Native Police recruits gave a creditable display of first-aid work. I subsequently put to them some questions as to what they would do in certain hypothetical cases, such as injuries from snake bite or from assegai wounds, and I received intelligent answers. On the evening of the 7th July I attended the Show Dinner at the local hotel, and on the following evening the Show Ball.

4. I have the honour to enclose extracts from the *Times of Swaziland* of the 6th, the 13th, and the 20th July.* You will find in them reports of my speeches at the opening of the European Show, the opening of the Native Show, and the Show Dinner. I spoke without notes and the local reporter did his best, but he has not succeeded

* Not printed here.

in reproducing some of my remarks correctly and has omitted others entirely, though he has done sufficient justice to the general purport of what I said. I also enclose a copy of the address* which the Paramount Chief presented to me at the opening of the Native Show. In the course of my reply, I took the opportunity not only to commend him for his recent decision to require the attendance of official witnesses at marriages under native law and custom, but also to speak very plainly to the natives about the evils of witchcraft as exemplified in a recent criminal case in which a minor chief, a witch-doctor and three women were convicted of the murder of a very young female child, parts of whose body were subsequently used in the preparation of "medicine" for the enhancement of the Chief's authority. I impressed upon the natives my sense of the barbarity of such practices, the discredit which they brought on the whole nation, and the determination of the Government to do whatever it could to stamp them out. In the particular case to which I have referred above, I have thought it necessary to confirm the capital sentence passed on the two male prisoners. The three women were recommended to mercy by the Court (as having acted under the orders of the Chief), and I have commuted their sentences to imprisonment with hard labour for life, subject to a direction that their cases be brought up for further consideration at the end of seven years. In my speech at the Show Dinner I thought it well to remind my audience of the very substantial grants which had been made to Swaziland out of United Kingdom funds since Mr. Amery's visit to the Territory a few years ago, and after enumerating the details and stating the impressive total, I remarked that if this was what they called stepmotherly treatment, I could only say that, in my opinion, they might go further and fare worse. This dictum was received with particularly loud applause. I may mention here that, during my two days at Bremersdorp, I had conversation with a large number of settlers, and that not one of them said anything directly or remotely suggestive of a desire for incorporation in the Union. On the contrary, one and all with whom I spoke seemed to regard the possibility of such incorporation as a menace rather than a prospective boon. It is true that I did not, on this occasion, meet any of the poor Dutch settled in the south of the Territory, nor had Mr. Pierce, who may be regarded as the leader of the presumably pro-Union element of the population (numerically the larger but economically the least substantial section of the settlers), returned from his trip to Europe. It is not unlikely that if a plebiscite were taken, racial sentiment would yield a majority in favour of incorporation, but I believe that it would include very few of the inhabitants of British descent, who after all are the brains and back-bone of the European settlement. It would be a mistake to conclude from such grumbling as times of depression could hardly fail to produce that the settlers are inappreciative of the generosity which has been shown them by the Government of the United Kingdom. I heard in all quarters expressions of sincere gratitude both generally, and very particularly for the recent assistance accorded through the Colonial Development Fund for the provision of a water supply for Bremersdorp and the establishment of a butter factory.

5. On Saturday, the 8th July, I received deputations, of three members each, from the European Advisory Council in the morning, and from the Swaziland cattle-breeders in the afternoon. On both occasions I left to the deputations the choice whether the proceedings were to be reported for publication or to be private and confidential, and both deputations opted for the latter alternative. The delegates of the Advisory Council were mainly concerned to express their apprehensions, in view of current rumours, that General Smuts might, during his visit to London, press for the transfer of the Territory to the Union, and that his pressure might prove successful, or that, even if it failed, the Union Government might attempt to force the hand of His Majesty's Government in the United Kingdom by imposing such economic restrictions and embargoes on the produce of the Territory as would reduce its inhabitants to complete destitution. I was not, of course, able to say more than that I had no knowledge of any démarche by General Smuts, but I reminded them of the assurances which had repeatedly been given as to consultation of the views of the local inhabitants, European and native, and reference to the House of Commons, before the transfer of any of the High Commission Territories were decided upon, and I added that, if a request for transfer were refused, it seemed to me quite inconceivable that His Majesty's Government in the United Kingdom would not be prepared to afford the inhabitants such protection or relief as might be necessary in the unlikely event of the refusal being followed by consequences of the nature which they had indicated. This expression of opinion seemed to produce a reassuring effect. They were anxious

* Not printed here.

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also with regard to the delay in issuing an Immigration Proclamation. I explained that it had been necessary to submit the draft to you, but that I hoped shortly to be in a position to legislate. Another point on which I reassured them was their impression that the Advisory Council had somehow ceased to enjoy the confidence of the Administration. This impression seems to have arisen out of the inability of the Government to furnish them with information as to the proceedings of last year's Round Table Conference at Cape Town with representatives of the Union Government on the fiscal relations of the Territories and the Union. I explained that the members of that Conference were pledged not to publish any account of its proceedings save with the consent of all parties; that the Union Government had not yet intimated its decision on the recommendations of the report; and that in my opinion it would not be politic to press for an immediate reply. I told them that they must trust me in this matter to act, so far as it was in my power to act, in accordance with the best interests of the Territories, and that even if the Union Government did not accept the recommendations of the Conference, the circumstance that its own representatives had participated in the framing of those recommendations might prove an argument of some value to us in any future negotiations. The whole discussion with the deputation was entirely amicable throughout, and I think it had a salutary effect in clearing the air and restoring confidence. My meeting with the representatives of the cattle industry was equally friendly. Their original intention had been to press for the restoration of export subsidies on Swaziland cattle or meat shipped overseas, but they said that, in view of the figures which I had quoted at the Show Dinner in regard to the financial assistance which the Territory had already received, they doubted whether it would be right to ask for the imposition of any additional burden on the British taxpayer, and they felt that they ought to withdraw the request which they had intended to submit. I made it clear that I personally disagreed with the whole policy of export subsidies, but that I was anxious that Swaziland farmers should not be debarred from participation in any facilities for the export of chilled beef which might be or become available to Union producers, especially with a view to lessening such competition on the Johannesburg market as might raise a clamour for further restrictions; if it were found that such participation in the export of chilled beef were made impossible through the circumstance that subsidies were paid in the Union and not paid in Swaziland, and if the cost of subsidies in Swaziland were not of a prohibitive amount, there would seem to me to be a case for consideration; I suggested therefore that they should go into the whole question with the Resident Commissioner and the Principal Veterinary Officer, and if it then appeared that some assistance by way of subsidy were really necessary in order to enable chilled Swaziland beef to be exported at all, and if the expenditure involved were not very formidable, I would do what I could to help them, though I warned them that the authorities in London, of whose goodwill they need have no doubt, might not, under present economic conditions, find themselves able to provide any further grant. I adopted a similar attitude towards an expression of their hope for some contribution to the cost of the railage of cattle to Johannesburg on lines similar to those now applicable to farmers in the Union, viz., the payment of one-half of the amount by which the railage exceeded 5s. per beast. They raised the question also of the levy of 4s. per beast on cattle sent from Swaziland to the Johannesburg market. This levy was not imposed as a tax, but merely for the purpose of reimbursing the Government for its out-of-pocket expenditure. 2s. of the 4s. has to be paid over to the Union authorities, but the balance of 2s. considerably more than covers the out-of-pocket expenses of the Swaziland Administration, and on investigating the accounts I found that one shilling would fully meet our requirements. I undertook therefore to reduce the levy to 3s. until further notice. We discussed subsequently various suggestions for the improvement of the quality of Swaziland cattle, without, however, reaching any definite conclusion.

6. I was very glad to notice the high esteem in which the Resident Commissioner is held by the settlers generally. He appears to have overcome most successfully the difficulties and prejudices with which he had to contend at the outset of his term of office. He has done, and is doing, admirable work, notwithstanding the discouragement of a financial position which necessarily hampers him at every turn. I feel that he has earned promotion, and I should be grateful if I could be allowed to discuss the possibilities in this respect during my forthcoming visit to London. Mr. Dickson's relations with Mr. Marwick seem to leave nothing to be desired. They are working together most harmoniously, and each of them, on separate occasions, expressed himself to me cordially about the other.

7. I left Bremersdorp on Sunday morning, the 9th July, by motor car, slept that night at Witbank, from where I motored to Pretoria on Monday morning, and after a few hours' work with Mr. Liesching, I proceeded to Johannesburg and caught the night train for Cape Town, arriving here on Wednesday morning the 12th July.

8. I have the honour to request that the expression contained in the Paramount Chief's address of loyality and devotion to the King's Throne and Person may be submitted to His Majesty.

I have, &c.,
H. J. STANLEY,
High Commissioner.

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